



THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA
RIVERSIDE

GIFT OF
Anonymous Donor

Calo

43





Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

THE ISSUES OF AMERICAN POLITICS.

A DISCUSSION OF THE PRINCIPAL QUESTIONS INCIDENT TO
THE GOVERNMENTAL POLITY OF THE UNITED STATES,
EMBRACING
THE SUBJECTS OF AMNESTY, FORCE LEGISLATION, CIVIL SERVICE,
SUFFRAGE, THE CENTRALIZATION OF POWER, OUR MONEY AND CURRENCY,
THE PUBLIC DEBT, THE NATIONAL BANKING SYSTEM, RECONSTRUCTION,
THE CONSTITUTIONAL AMENDMENTS, TARIFFS, TAXATION,
PROTECTION AND FREE TRADE, AND OTHER IMPORTANT TOPICS.

AN
EXHAUSTIVE TREATISE UPON AMERICAN POLITICS.

BY
ORRIN SKINNER,
(OF THE NEW YORK BAR.)

PHILADELPHIA
J. B. LIPPINCOTT & CO.

1873.

JK2261
S62

Entered according to Act of Congress, in the year 1872, by

ORRIN SKINNER,

In the Office of the Librarian of Congress, at Washington, D. C.

.....
LIPPINCOTT'S PRESS,
PHILADELPHIA.
.....

WITH DUE RESPECT,

THE AUTHOR

ADMIRINGLY DEDICATES

THIS VOLUME

TO

FREDERE W. DWIGHT, LL

SCHOLAR, A PROFOUND LAWYER

CONTENTS.

	PAGE
PUBLISHERS' ADVERTISEMENT.....	xix
AUTHOR'S PREFACE.....	xxiii

INTRODUCTORY.....	13
-------------------	----

PART I.

MONETARY AND FINANCIAL TOPICS.

EXPLANATORY.....	19
------------------	----

CHAPTER I.

MONEY AND CURRENCY.

Money with the Ancients—The Requisites of Money—What is Money?—The Offices of Money—A Measure of Value—The Standard in the United States—A Medium of Exchange—A Producer of Value—The Relations of Money to Commerce—The Amount Needed—The Balance of Trade—Interest—The Prospective Decline in the Value of Money—The Kinds and Substitutes of Money—Convertible Currency—Inconvertible Currency, or Paper Money—The Proper Limits of both—Excessive Issues of the same.....	20
---	----

CHAPTER II.

THE MONEY AND CURRENCY OF THE UNITED STATES.

The Subject Classified—History of our Present Circulating Medium—The Character of our Circulation Prior to the Rebellion—The Status of Business at its Outbreak—The Legal-Tender Notes—Issues of—Effect of the same upon Business—The Three-per-cent. Certificates—More Bank Currency demanded—"Equalization" of the same attempted—Gold Banks—Statement of

Money in Circulation at the Close of the Year 1871—Criticism of the Legal-Tenders—Action of the United States Supreme Court in reference to—Secretary of the Treasury no Authority to make Further Issues of—What they Cost—Amount of Circulating Medium needed in the United States at the Present Time—The Present Volume of Circulation Fifty per cent. in excess—Evils of the Present Paper Circulation—They constitute a Narrative of Indescribable Suffering—The Fraud connected with Mutilated Currency—These Evils bear mostly upon the Laboring, Salaried and Agricultural Classes—Resumption of Specie Payments—How to be Effected—Senator Sumner's Plan Criticised—Compound-interest Notes not Wanted—The Retirement of our Legal-Tenders the Proper Means of Resumption... 66

CHAPTER III.

BANKS AND THE NATIONAL BANKING SYSTEM.

DIVISION FIRST.

BANKS AND BANKING BUSINESS IN GENERAL.

A Necessary Adjunct of Money for Purposes of Commerce—Their Legitimate Office to Receive and Distribute Money—Present Offices—Deposit—Discount and Circulation—Deposit Masses Capital—A Means for Saving the Use of Money—Is Deposit a Myth?—Deposits Seldom Moved—Deposit is not Money, but its Substitute—Discount, the Purchase of Unmatured Obligations—The Fund by which the Business of Discount is Worked—How Discount Operates in Connection with Deposit—Circulation, how it Differs in Nature from Deposit and Discount—A Measure of Public instead of Private Economics—An Act of Credit—The Elements of the Credit requisite for Circulation—Circulation belongs to and devolves upon the People—The Doctrine of Convertibility—Is it Tenable or Feasible?—Private Banking—Banking in History—The Banks of Venice, Genoa and Amsterdam—Their Origin and Operations..... 95

DIVISION SECOND.

THE NATIONAL BANKING SYSTEM.

A Monopoly—Its Origin—Its Adoption and Principal Features—The Advantages of the System—They are seen in its Material Basis, Government Bonds—The Arguments against this Feature

of the System Examined and Refuted—They are also seen in the Element of Uniformity—Compared with the State Bank System in this respect—Also seen in the fact that Circulation cannot be in Excess—Its Disadvantages—A Monopoly—How a Monopoly—It sets an Arbitrary Limit upon the Extent of Circulation—In this respect, Unjust, Indefensible and in Violation of Economic Law—It robs the People of the Benefit of Circulation and confers it upon the National Banks—In this respect it Enforces Illegal Taxation—Minor Defects—The Theory of Convertibility, as applied to the System, fully Examined—The Conflict between the System and the Legal-Tender Notes—A Balance taken between the two—The Result in Favor of the Banks—The System, with certain Modifications, a Success.....	119
---	-----

CHAPTER IV.

PUBLIC DEBT AND FUNDING SCHEMES.

DIVISION FIRST.

PUBLIC DEBTS.

The Origin of Public Debt—Historical View of the Same—The Causes which impel Nations to run in Debt—Public Debt in Europe—How Contracted in General—The Different Expedients adopted for Payment of the Same—The Theory that a National Debt is a National Blessing, Examined—It is for England, but not for the United States—It Depends upon the form of Government—Minor Comment.....	142
--	-----

DIVISION SECOND.

FUNDING SCHEMES.

Nature and Origin—Funding defined—Details examined—Sinking Funds—Historical View of the Subject—The Results of Funding—The Various Schemes fully examined—Opinions of Eminent Writers upon the same.....	156
--	-----

CHAPTER V.

THE PUBLIC DEBT OF THE UNITED STATES.

The Public Debt prior to the Late War—The first Financial Measures of Government at its Outbreak—They show an Utter Inappreciation of the Character of the Conflict—The General Policy in this respect fully stated—The Various Evidences of	
--	--

Indebtedness, and the Acts which Authorized them, examined— The Evils of the Financial War Policy were Short Loans—Loans in the Form of Money—The various Funding Acts stated and explained—The Operations of the "Syndicate" examined— Wholly Illegal—Its Results—A Failure—Why the Debt should be Paid—How the United States Differ from Great Britain in this respect	164
--	-----

PART II.

EXISTING AND PROPOSED CHANGES IN OUR ORGANIC AND MUNICIPAL LAW.

INDUCTIVE.....	185
----------------	-----

CHAPTER I.

THE CONSTITUTIONAL AMENDMENTS.

The Importance of the Topic—The Thirteenth Amendment—The First Fruit of the Rebellion—Indications of the Purpose of the North to Exterminate Slavery—The Confiscation Acts and the Emancipation Proclamations the foundation of the Amendment —The Origin of the Amendment—The Manner and Legality of its Adoption—The Question Discussed at length—The Legal- ity of its Ratification by the States—The Status of the States assuming to Ratify—President Lincoln and Reconstruction— President Johnson and Reconstruction—The Constitutionality of the Amendment—The same Examined at length—Minor Col- lateral Questions—Presidents Lincoln and Johnson's courses on Reconstruction compared—The same Defended—The Effect of the Amendment—The Fourteenth Amendment—Introductory Comment—The Incompleteness of the Scheme—Its Origin due to both Political and Moral Causes—The Ends sought by the Change—The History and Legality of both the Congressional Vote proposing the Amendment and its Ratification by the States—The Status of the States assuming to Ratify—The Ques- tion of Suffrage—The Constitutionality of the Scheme—Citzen- ship—The Amendment analyzed—Distinction between Civil and Political Rights and Privileges—The Resulting Effect of the Amendment—Monopolies—The Rights of Corporations and

CONTENTS.

ix

PAGE

Franchises under the Amendment—The case of the New Orleans Slaughter-house Company—The Full Effect of the Amendment stated—The Fifteenth Amendment—Its Cause and Origin—The Enfranchisement of the Blacks—The Legality of its Ratification—The Status of the States assuming to Ratify—The Right of a State to Withdraw its Assent considered—The Constitutionality of the Amendment—Discussed at length—The Extent of the Power of Amendment—The Results of the Amendment fully defined—Woman Suffrage under the Amendments—The alleged Merits of the Fourteenth and Fifteenth Amendments criticised in detail—Deduction from the Criticism—The Case of the Blacks—Concluding Comment.....	190
---	-----

CHAPTER II.

RECONSTRUCTION.

Executive Proclamation—Congressional Legislation—The Freedmen's Bureau—Virginia and Tennessee Reconstructed—Death of Mr. Lincoln—President Johnson's Policy—Progress of State Restoration—Congress upon Reconstruction in 1866—The Opening of the Executive and Legislative Conflict—Contest upon the Freedmen's Bureau Bill—The Same reviewed—Disagreement upon the Civil Rights Bill—Its Constitutionality considered—The Status of the late Disloyal States in this Connection—Citizenship considered—The Civil Rights Bill Unconstitutional—President Johnson Officially Declares the Rebellion Concluded—Continued Disagreement between the President and Congress—The Freedmen's Bureau Bill again in Question—The Same Vetoed—Neither Party entitled to Credit—A mere Fight of Policies—The Final Reconstruction Measures of Congress—The Same Stated and fully Considered—What Might have Been—Collateral Comment—Constitutionality of the Scheme—Vetoed by the President—Legality of Presidents Lincoln and Johnson's Measures—Conclusion of Reconstruction.....	269
---	-----

CHAPTER III.

AMNESTY.

The Question stated—The Several Measures of Proscription—Official Proscription—The Iron-clad Oath Act—The Proscriptive
--

Feature of the Fourteenth Amendment—The Same construed with the Iron-clad Oath Act, and their Operation and Effect considered—The Constitutional Oath Act—Suffragan Proscription—The Abstract Causes which render Amnesty Necessary—The Direct and Collateral Ends sought by its Institution—The Last fully equal to the First—The So-called Moral Argument against Amnesty refuted—The Various Proscriptive Measures criticised—The Same based upon Policy—Not needed to Secure the Results of the Late War—Prejudicial in their Tendencies to the Welfare of the Entire Nation—Proscription as a Means of Punishment—Inadequate and Indefensible—The Policy of Hate—Universal Amnesty Required—The Problem now Before the People—The Ku-klux Klans—The Pathway out of Present Difficulties—Executive Action in Respect to Amnesty—Partly Legal and Partly Illegal—President Johnson Dismissed—Interlocutory Comment upon his Impeachment—The Status of Missouri—The United States Supreme Court on Test Oaths.....	295
--	-----

CHAPTER IV.

FORCE LEGISLATION.

The Enforcement or "Ku-klux" Act stated—Its General Character—Construed with the Fourteenth Amendment—The Act in this Connection Irrelevant—The First Eight Amendments to the Constitution and the Bill of Rights—The Case of the Blacks—The Fourteenth Amendment runs against the States—The Enforcement Act runs against Individuals—The Act confers Executive and Judicial Powers—Unconstitutional—The Subject in this Connection fully considered—The Manner in which it Violates the Constitution—The <i>Habeas Corpus</i> Question—Invasion and Rebellion considered—Congress Illegally Construed both the Constitution and the Fourteenth Amendment—Miscellaneous Comment—The Plea of Necessity Considered and Refuted—The Inherent Errors of Force Legislation—The Centralization of Power referred to—The Duty of the American People—Present Tendencies—Action Taken under the Law—The Scheme entirely Impolitic, as well as Illegal—The Present Condition of the South under the so-called "Carpet-Bag" Governments	316
--	-----

CHAPTER V.

CIVIL SERVICE.

	PAGE
<p>"To the Victor belong the Spoils of the Enemy"—The Origin and Significance of the Phrase—Civil Service defined—The present Institution wholly a Political One—The Status of the President and Congress in relation thereto—The Defects of the Present System—It Rests upon Political Influence—Merit entirely Discarded—Its Enervating Effects upon the President—The Same as to Members of Congress—The Same as to Members of the Service—A Continuous Chain of Self-interest from the President to the most Petty Official—The Operation of the System viewed—How it Bears upon Elections—Political Assessments—The System a Slavery of Opinion—A Statement of the Number, Grade and Salaries of Officials Engaged in the Service—Civil Service Reform—Attempts in this Direction so far Failures—Measures Necessary for an Adequate Reform—They consist of Twelve Changes in our Organic and Municipal Code—The Same Discussed at Length—Criticism of the Report of the Civil Service Commission—It is both Inadequate and Impracticable—The Worth of Oral or Written Examinations considered—The Machinery by which the Same are to be Conducted—It Opens more widely the Door for Fraud and Abuse than the Old System—"Political Pressure" not Overcome, but Encouraged—A mere Machine for Party Aggrandizement.....</p>	342

PART III.

INDUSTRIAL AND REVENUE LEGISLATION.

PRELIMINARY.....	397
------------------	-----

CHAPTER I.

PROTECTION AND FREE TRADE.

The Inherent Difficulties of the Question—Like the Entire Theme of Political Economy, it is not Responsive to the Rules of Pure Science—The Statement Corroborated by Eminent Authority—The Method of the Opposing Forces—Protection and Free Trade Defined—The Conditions upon which the Opposing Doc-

trines Rest—The Limits of the Respective Systems—Free Trade is Passive, Protection Active—Protection Merely Secures the Possibilities of Capital and Industry—Cheapness and the Law of Price considered—The Effect of Protection thereon—Protection Seeks its Ends by Means of Tariffs upon Imports—Protective Tariffs do not Enhance the Price of Imports to the Extent of the Burden Laid upon the Same—The Law of Competition makes such Enhancement Impossible—The Principle Illustrated—Protection does not Divert the Employment of Capital and Industry to their Prejudice—The Point considered at Length—The Same of National Prosperity—Protection does not Foster Monopolies, either Individual or Local—Protection does not Encourage Ignorance—Protection is not Taxation—Protection does not Bar Exportation—The Force of Natural Law in this Connection—National Prosperity based upon Producing Power—Protection should be Stable—John Stuart Mill in Support of the System—The Moral Aspect of the Question—Rude and Skilled Labor—Agriculture and Manufactures—Cities and Villages—It is a Question of Civilization or Barbarism, Progress or Decay—The Proper Policy for the United States—The Absolute and Relative Conditions of the Country Stated—In View thereof Free Trade Points to the almost Universal Pursuit of Agriculture—Free Trade, by Reducing Cost of Raw Material, would not put our Industries on an Equal Footing with European Ones—The Case of England Cited—Its Position Dissimilar to that of the United States—No Analogy between them—The Reason England advocates Free Trade—The Question of the Laboring Classes in this Connection—England Owes her present Commercial Status to Protection—Skilled Labor never a Drug—Protection at Present the Proper Policy of the American Republic.....	398
---	-----

CHAPTER II.

TARIFFS.

The Scope of the Discussion—It will not Descend to Details, but state Principles by which the Same may be reached—History of Tariff Legislation in the United States—The Tariff of 1789—A Protective Measure—Its Cause and Origin—Amendments thereof—Alexander Hamilton and James Madison upon the Policy—The Tariff of 1816—Induced by the Changed Status of Europe

and America—Inadequate—The General Distress which followed—The Tariff of 1824—Strongly Protective—Its Cause and Origin—A Success—Clay and Webster the Master-spirits of the Conflict—The Claim of Locality—The Tariff of 1828—A Modification of the one of 1824—The Compromise Tariff of 1833—Protection Abandoned—Its Cause and Origin—South Carolina—Clay the Mover of the Scheme—Webster its Opponent—Positions of the two Reversed—From 1833 to 1842 Free Trade and Disaster Ruled the Country—The Tariff of 1842—Protection Resumed—Modified in 1846—Prosperity Followed—The Tariff of 1857—Protection again Abandoned—The Forerunner of General Distress—The Tariff of 1861—Protection Reinstated—Why?—Protection for the United States Defended—Our Import and Export Trade Reviewed—The Results of Tariff Legislation in this Country—The Case of Labor, Agriculture and Cotton—The Classes of Articles to which a Protective Tariff should Attach—The Principle Stated which here Governs—The Case of Raw Materials—Iron requires Protection—Coal and Wool do not—Lumber for Special Reasons should not have it—The Extent to which a Protective Impost should be Laid—The Same fully examined.....	445
--	-----

CHAPTER III.

TAXATION.

Introductory Comment—The Scope of the Topic—Taxation in the Abstract defined—It is a Creature of Policy—How the March of Civilization Compels it—The Kinds of Taxes Classified—Direct, Indirect, Real, Personal and Individual Taxation defined—The Powers of Taxation Conferred by the Constitution—An Equalization of the Burden the Prime Difficulty of Taxation—How shall it be Overcome?—Proportionate Sacrifice and Proportionate Protection—The Progressive System—Direct Taxation Discussed—The Land-tax—Citations from English History—The Most Just—Income-taxes—Impracticable, and, in the United States, Unconstitutional—Capitation-taxes—Indirect Taxation—A House-tax—Unjust and Unreasonable—Citations from English and Irish History—Eminent Writers thereon—Excise-taxes—They Reach Profits, Vocations and Commodities—Labor in this Connection—They work Injustice—Inappreciable—The Error of Congress in this Connection—The Whisky-tax—High

Rates of Taxation upon Luxuries and Low Rates upon Necessaries yield the Greatest Revenue—Taxation by Tariffs—The Results of Indirect Taxation in the United States—Full Statistics Show them Oppressive and Unfair—The Question of State Taxation—It should be Confined to Real Property—Objections to the Plan refuted—The Question of Taxation by the General Government—A Proper Scheme Suggested, and Discussed at length—The Present Needs of the General Government—All Direct Taxes may be Abolished and our Tariff Curtailed, and still Reduce our Debt Fifty Millions per Annum—The Error of Congress in this Respect—"Revenue Reform".....	468
---	-----

PART IV.

REPRESENTATIVE GOVERNMENT.

PREPARATORY.....	509
------------------	-----

CHAPTER I.

THE ELEMENTS OF REPRESENTATIVE GOVERNMENT.

Governments are the Offspring of Experience, and not of Invention—The Component Parts of Government—The Stages of Civilization in respect to Government—The Subject in History—The Elements of Representative Government are Founded in Education—They are Threefold—All Forms of Government in a certain sense Rest upon Consent—The Processes of Education which Lead to Representative Government—The Attendant Difficulties of—The Reason of Failures in Attempting to Adopt it—The Question viewed Philosophically—The Subject belongs to the Realm of Reason.....	511
---	-----

CHAPTER II.

SUFFRAGE.

The Essence of Representative Government—Purity of Suffrage defined—The Requisites of Suffrage—The Unthinking Mind Erroneously looks upon Suffrage as an Abstract Right—It Rests upon Duty—Universal Suffrage, literally speaking, is Indefensible and Wrong—Suffrage defined—Its Office and Power—The	
--	--

Question of Education—The Proper Limits of Suffrage—Civilization has not yet Solved the Problem—Light Sought from the History of the Elective Franchise in the Old and New Worlds—The Question in a Philosophical Sense—It Depends upon the Peculiar Conditions of every Nation in Respect to Race, Climate, Traits of Character, Education, etc. etc.—The Proper Limits of Suffrage in the United States—The Difficulties attendant upon Clanship in this connection—Our Peculiar Status considered—An Intelligent Suffrage our only Safeguard—Suffrage should be a National Institution—A Proper Scheme of Compulsory Education Suggested—The Benefits of such a System—The Position of the United States in this Respect a Critical One—The Hope that Intelligence will Reassert its Dignity—The Opinion of Theorists upon this Point—WOMAN SUFFRAGE—A Question entirely Distinct from Suffrage in General—Upon this Thought is Based the Whole Issue—The Real Scope of the Argument—John Stuart Mill Cited—Woman Suffrage Denies the Natural Condition of Woman as Ordained by God—It Defeats the Purposes of the Family—The Creator has not Indulged in Creation without a Purpose—Such Purpose is Stamped upon every Species of His Handiwork—Adam Ferguson Cited—The Distinguishing Characteristics of the Male and Female Creation—The Delicacy of the Point—Analogies Drawn from the Brute Creation—These Characteristics Designate the Peculiar Scope of Male and Female Duty—These Laws applied to Men and Women—Woman's Nature—Eminent Writers thereon—The Requirements of Suffrage Power are such that its Exercise by Woman Essays a Repeal of the Laws of God—The Assertion Supported by a View of Republican Politics—Pertinent Inquiries—The Question of the Family—Its Purposes are the Preservation of Morality and the Perpetuation of the Human Race—The Marital Relation—Society—Maternity—The Majority of Women Shrink from the Exercise of the Elective Franchise—Sexual Passion—Woman and the Ballot an Illegal Bridal..... 517

CHAPTER III.

MINORITY REPRESENTATION.


The Question as Connected with Republicanism—The Same in Reference to the Will of the Majority—Minority Representation

defined—The Legitimate Scope of Suffrage in this Connection—How Majority Representation works Disfranchisement—The Primal Claim of Minority Representation—The Same as seen in Legislation—Majority Representation Proscribes Intellect—Also Fosters Class Legislation—How Minority Representation would Obviate these Difficulties—The Means of its Adoption—Cumulative Voting Considered—Thomas Hare's System the Best ever Devised—The Same Simple, Effectual and Impartial—Fully explained.....	543
---	-----

CHAPTER IV.

THE CENTRALIZATION OF POWER.

State Rights <i>vs.</i> National Authority—The Difficulty Attending the Settlement of the Possession of Power—A Task of Civilization—The Claim for Centralization Based on certain Alleged Necessities—How Centralization Concerns the United States—The Nature and Origin of the General Government—The Jeffersonian Theory of State Rights considered—Secession refuted—The Proper Line of Division between State and National Authority—The Constitution has Defined it by Conferring certain Joint and Exclusive Powers—These Powers Enumerated—The Canons by which they are Designated Joint and Exclusive—The Instances in which the General Government has Clashed with State Authority—The Instances in which it has in this manner Violated the Constitution—Mostly Confined to the Present Administration—Instances in this connection Numerous—The Present Administration Arraigned—Its Faults Stated in Detail—Lawlessness its Prime Defect—The Chief Executive, Congress and the Departments all Involved—Centralization not Required except in respect to Suffrage—Why Required here—The Evils it would Abolish and Prevent—Ignorance the Chief Agency which essays Federal Usurpation—The same a Cumulative Fault of the Present Administration—Conclusion—Bismarck's Edict of Law—The Present Need of the American People seen in Present Abuses of Official Trust—Absolutism of some sort Needed in Every Government—This in the United States is the Inviolability of its Organic and Municipal Law—The Sole Kings of the People—The Immediate Antecedents of the American People give a Reason for Present Official Lawlessness—The Necessary Rule for Official Conduct.....	551
---	-----

 The portions of this work which contain matter peculiarly pertinent to the presidential canvass of 1872 are as follows—namely: The second and fifth chapters and Division Second of the third chapter of Part I., the third, fourth and fifth chapters of Part II., the third chapter of Part III., and the fourth chapter of Part IV. The first discloses the defects and evil results of our present circulating medium; the second examines the management and funding of the public debt, including the Syndicate operation of the Department of Finance; the third treats of the National banking system, and suggests necessary modifications; the fourth discusses the subject of universal amnesty for the Southern masses; the fifth views the alleged violation of the Constitution by Congress and the President in the adoption and enforcement of the so-called Ku-klux act and suspension of the privilege of the writ of habeas corpus; the sixth examines the charges of abuse of the civil service by both Congress and the President, and suggests adequate means for the reformation of the system; the seventh shows the defects of our present scheme of taxation; the eighth discusses the alleged violation of the Constitution by both Congress and the President in adopting and enforcing measures which are claimed to unwarrantably interfere with the local elections of the several States, the charge of the subversion of the war and judicial powers of the Government by the President, the charge of the violation of United States statutes and international law by the War Department, and of the will of Congress by the Navy and Post-office Departments, the alleged prostitution of the press by the present Administration; states the chief need of the country at the present crisis, and in each of the above instances comments fully upon the collateral topics arising out of the same.

PUBLISHERS' ADVERTISEMENT.

THE publishers of "The Issues of American Politics" accompany the presentation of the volume to the public with the following comment.

The nature of the work is correctly indicated by the general title, but its exact, legitimate limits and the ends it attempts to accomplish will be better appreciated by a few words of explanation.

In respect to the first, the subjects enumerated in the Table of Contents disclose the main idea which has governed the author in fixing the boundary-lines of his work—namely, an examination of all the principal questions which are associated with the politics of the United States. In pursuance of this thought the author has grouped his topics under four general classifications, as seen in the "Introductory." These topics, while they explore a portion of the domain of both political economy and governmental science, are not claimed by the author to constitute an abstract treatise upon either. They enter upon these respective lines of inquiry only as they furnish

subjects of dispute in American politics. The work, consequently, is essentially political and entirely American.

As to the end in view, the endeavor has been to subject the multifarious and perplexing questions of our politics to a clear and intelligible discussion, and put them before the masses in a manner that would assist them in forming a fair and impartial judgment upon the merits of opposing claims. The amount of information of the most important character which the author has in this way massed between the covers of a single volume is really immense. The enormous detail of our financial experiments and operations; the important changes in our constitutional law, and their effect upon the public; the innovations in schemes of legislation; the perplexing question of our civil service (the simple, novel and effectual treatment of which is worth the price of the entire volume); the economic and industrial questions of Protection, Free Trade, Tariffs and Taxation; the claims of Amnesty and Reconstruction for the South; the material status of that portion of our country; the operation of our system of Suffrage; the irrepressible conflict between the States and the General Government as to the centralization of power; the new order of things demanded by the result of the late war,—all these are not only presented in an historical light, but, with numerous citations from American and European history, fully

discussed and unsparingly criticised, with suggestions for remedial change.

In respect to such criticism, the reader cannot but be impressed with its impartial and non-partisan spirit. In those portions of the work which have suggested a review of the course of the present Administration this general feature is particularly noticeable, and the criticism of the "Syndicate" operation of the Treasury may well be referred to as an example of the fairness of the entire work. The volume, in short, places the issues of American politics candidly and squarely before the people, and this with a clear and luminous method and pleasing rhetoric.

An eminent critic, in reviewing the work, has said: "Owing to the wide range of discussion, I do not, on all points, as a matter of course, agree with Mr. Skinner. The entire work, however, is extremely interesting, contains a vast amount of valuable information, and, as regards purity of logic and beauty of rhetoric, is almost faultless. The abstract discussions of Part I. designated in the 'Explanatory' remarks which precede it, by reason of the intricacy of the subjects, will perhaps fail to interest the careless reader. They are, however, highly important. Discrimination between different portions of the work is hardly possible, but the chapters upon the Money and Currency of the United States, Banks and the National Banking System, Public Debts and Funding Schemes, the Constitutional

Amendments, Amnesty, Civil Service, Suffrage, the Centralization of Power, and the whole of Part III., are extraordinary instances of clear and elegant narration, convincing argument and rhetorical skill. The disposition of the question of Civil Service is peculiarly important, on account of its feasibility and simplicity."

PHILADELPHIA, September 1, 1872.

PREFACE.

THE twenty-five years last past cover the most important political epochs of the United States. Within the period above named, American literature, in a *single* work, has not assumed to solve the issues of American politics. The annexed essays, if they may be dignified with such a title, were suggested by reason of the facts above stated, and propose a discussion of the greater portion of the questions which are agitating the public mind. These questions, although they all attach themselves to the governmental polity of the United States, and are, consequently, in a general sense, entirely of a political origin, are, however, strictly speaking, of a twofold nature, namely: Those which are purely political, and those which, while in a broad view political, are more especially economic in their character. They are enumerated and classified in the introductory remarks which follow this prefatory comment.

In respect to those which are economic, the investigation is conducted by a preliminary discussion of the abstract principles of economics which form the foundation of each particular topic, followed by an application of such principles to the present exigencies of the American republic. For instance, the chapter devoted

to "The Money and Currency of the United States" is preceded by one entitled "Money and Currency." The space given to the discussion of "The National Banking System" follows prior remarks upon "Banks and Banking Business in General," and the investigation of The Public Debt and Funding Scheme of this country is subsequent to that of Public Debts and Funding Schemes as separate entities of political science; and so through the entire work. This abstract discussion seemed absolutely imperative for a proper understanding of the practical questions herein considered which result from the operation of economic law.

The value of these essays, if any, is twofold: First, they consist, as already stated, of a primal discussion of the more important principles of the so-called science of Political Economy, which are interwoven with American Politics, followed by a practical application of those principles to the present condition of affairs in the United States. Second, they treat of several very important subjects which have not for the most part been separately discussed in printed form, save in the disconnected manner of newspaper editorials and periodical articles. Of these, The Constitutional Amendments, Reconstruction, Amnesty, Civil Service, Force Legislation, Suffrage (particularly Woman Suffrage), Minority Representation and The Centralization of Power, have engrossed particular attention.

In these respects, these essays modestly assert a merit which does not attach to any similar work now extant. They have been penned with an aim to satisfy a seeming demand among the masses of the people for information upon these and other public matters of the

most important character. American history, since 1860, has been so closely crowded with events of the most stupendous import—and events, moreover, resulting in the adoption of new and untried expedients—that no one but a constant student of the same could scarce hope to reduce them to a clear and satisfactory solution. Changes have been made in our constitutional law; a portion of our territory has been subjected to governmental reconstruction; its people in a measure proscribed; our Civil Service is a byword and a reproach, and the constantly-increasing heterogeneous character of our population is subjecting the efficiency of Representative Government to an ordeal of unprecedented rigor. A proper understanding of these and kindred topics, as already stated, seems to be one of the present needs of the community. This want these essays have striven, in a measure, and doubtless with imperfect success, to appreciate and supply.

The method which has been pursued in discussing the topics herein noticed was designed to be peculiarly simple, natural, and consequently logical. With the dismissal of every topic, it has been succeeded by one which seemed to be suggested by its predecessor. Another feature of the author's method has been to give each subject and sub-subject sole and undivided attention. In the opening chapter, for example, money is discussed, by dividing the topic into three divisions, namely, Metallic Money, Convertible Currency and Inconvertible Currency or Paper Money. Most writers have treated these sub-subjects jointly, and consequently produced confusion in the minds of inexperienced readers. This feature of singleness of discussion pervades the entire work.

The style of the essays is intended to be plain, clear and unostentatious. It could not, indeed, be otherwise. The subjects are such as preclude all play of the imagination, flights of fancy or figures of rhetoric; and a reader who seeks such entertainment must look in other fields of literature.

Thus much as to the origin and general design of the treatise. An extended statement of its themes, and the causes which have forced them upon public attention, will be seen in the brief succeeding introductory.

In conclusion, the work has doubtless many imperfections, and possibly a modicum of merit. If it possesses the latter characteristic in a sufficient degree, it will be read; otherwise, it will be let alone. It is consequently submitted to an intelligent and discriminating public, with neither apology on the one hand nor plea for favor on the other. It must stand solely upon its intrinsic worth.

O. S.

NEW YORK, August 1, 1871.

THE

ISSUES OF AMERICAN POLITICS.

INTRODUCTORY.

THE present issues of American politics spring, in a great measure, from events which have transpired within the last decade. A brief analytical statement of these events will, consequently, form a portion of the following introductory remarks.

On the 12th of April, 1861, the United States were precipitated into the most gigantic civil war that has found a place in the annals of history. During the presidential term next preceding the 4th of March of the same year, the Executive power had been controlled by a party and surrounded by men one wing of which, and a majority of whom, subsequently became the open enemies of the Government they had sworn to protect. The official acts of the occupant of the White House had added to the shame of cowardice the crime of hypocrisy, and the heads of the Departments, leagued as they were with the rebellious faction, had virtually given it possession of the National Treasury and the land and naval forces of the country. In addition to Executive disloyalty, traitors infected the Capitol and the judiciary was looked upon with suspicion.

At the close of this presidential term (March 4, 1861) the Republican party, in pursuance of the legally-expressed

wish of the people, for the first time assumed the direction of the General Government, and Abraham Lincoln was inaugurated as its Chief Magistrate. The leaders of the revolt, however, had so far availed themselves of their opportunities that the new administration sought in vain the appliances of Government to which it would have otherwise succeeded. The mints, forts, dockyards and armories of the country had been placed beyond the reach of the administrative arm, for in instances where they had not been actually transferred to the custody of the seceding forces, the arteries of communication that had connected these citadels of strength with the seat of Government had been severed, and the federal authorities were thus shut up in Washington, with no immediate means for even a defensive campaign.

The prosecution of the war necessitated the organization of an army and navy which, in numerical proportions at least, were entirely without precedent. The supplies, ammunition and various accoutrements demanded by this immense force at once exhausted the circulating fund of national treasure, and the Government sought to put its department of finance in a position to meet, not only obligations already due, but also those rapidly approaching maturity. To secure these ends, the National Banking System was established, and evidences of indebtedness, various in form, character and denomination, and amounting in the aggregate to the sum of \$2,901,510,468, all of which will hereafter receive a separate consideration, were either put in circulation as current funds or negotiated as loans in the different money-marts of the world.

The perpetuation of slavery was the grand object for which the rebellion was waged. This element of the strife suggested the propriety of a change in our organic law, and the proposed Thirteenth Amendment to our Federal Constitution was submitted to the States for ratification.

The war closed, but the indiscretion of Executive action prolonged, as its cowardice and hypocrisy had precipitated, our difficulties. The Republican party bore its burden in patience till 1869, but in the mean time measures of the gravest and most important character that were ever pressed upon the attention of a government demanded consideration. The States had ratified the proposed addition to our Constitution, and, as such, the Thirteenth Amendment had been officially promulgated. Suppletory provisions, however, were deemed advisory, and after submission to and ratification by the States, the adoption of the constitutional article now known as the Fourteenth Amendment was officially declared. The animosities of the recently-contending factions, moreover, awaited reconciliation, and the needed revival of industrial pursuits absolutely required that these discordant elements should be recomposed. For the attainment of these ends the Reconstruction Acts and their execution followed. The work of re-creation, however, was not at this point complete. The country had incurred an enormous debt, and provision for its payment was imperative. A scheme of internal taxation was consequently put into operation, and a tariff upon imports was established. The first-named measure has provoked criticism, not merely as to its wisdom, but in some respects as to its legality, and the last-named has again arrayed against each other the opposing forces of Protection and Free Trade. The Fourteenth Amendment to the Constitution, moreover, failed to satisfy the adherents of the administration, and the legal sanction of the States was asked to another proposed addition to our fundamental law. The sanction was given, and the thus constituted Fifteenth Amendment to our Federal charter was officially announced. The maintenance of the national credit seemed possible to the Government only by pursuance of systematic action in paying the public debt, and this, in connection with collateral causes, has evolved a

funding scheme, approved by many and inveighed against by not a few. Continued disturbances at the South have given rise to a species of force legislation on the part of Congress, the propriety of which is questioned by the whole of the Democratic and a portion of the Republican party. The long-looked-for provision of Universal Amnesty has not yet been made, whereat its advocates, who constitute a respectable and by no means a small proportion of both political organizations, find cause for the censure of a policy the further continuance of which they claim to be a useless and enervating proscription. Grave defects in the workings of the departments for the collection of taxes and customs, together with alleged abuses of official patronage, have caused a demand, and in no respect a party one, for a reform in our Civil Service. In the metropolis of the nation, moreover, a clan of adventurers, deriving their chief support from the foreign element, have subverted the municipal government, robbed the treasury, illegally mulcted its taxpayers, given to the State of New York an established Church, bid defiance to the laws to which they are amenable, and with their enormous hoard of stolen treasure have dared to reach out their shameless hands to seize the reins of the Federal Government.

From these facts spring the present issues of American politics.

The object of the chapters following this Introductory is to discuss the issues presented by this record, basing the examination of the same upon such facts as alone appear to be relevant and material. For the sake of logical propriety, and to avoid confusion, the subjoined remarks will be divided into four parts, and the constituent elements of each submitted to a separate consideration.

Part I. will be entitled "Monetary and Financial Topics," and thereunder attention will be directed to the subjects of "Money and Currency;" "The Money and Currency

of the United States ;" " Banks and Banking Business in General ;" " The National Banking System ;" " Public Debts and Funding Schemes," and " The Public Debt and Funding Scheme of the United States."

Part II. will be styled " Existing and Proposed Changes in our Organic and Municipal Law." Under this, " The Constitutional Amendments," " Reconstruction," " Force Legislation," " Amnesty," and " Civil Service" will be treated of in their respective order.

Part III. will be designated " Industrial and Revenue Legislation." This heading will embrace, as sub-subjects, " Protection and Free Trade," " Tariffs," and " Taxation," with a careful examination of the same as applied to the present condition of this country.

Part IV. will be entitled " Representative Government," wherein " The Elements of Representative Government," " Suffrage," " Minority Representation," and " The Centralization of Power" will receive a detailed investigation.

Parts I. and III. embrace the subjects which in the Preface were styled economic, while Parts II. and IV. include those which are purely political. These respective Parts, with their kindred subjects, were placed out of consecutive order for the purpose of affording the reader an agreeable change from the necessarily close line of discussion which the examination of economic topics always assumes, to what is generally considered the more entertaining field of inquiry which is opened by an acquaintance with purely political investigations. As the several Parts in respect to subjects are entirely disconnected, the arrangement above noted works no violence to logical order or consistency.



PART I.

MONETARY AND FINANCIAL TOPICS.

EXPLANATORY.

A REMARK in the Preface intended for general guidance demands a special application in this connection. Reference is had to the statement there made that the discussions of the various subjects of this work are initiated by expositions of abstract principles. This is particularly so in the case of the topics above entitled. As to those embraced in Parts II., III. and IV., this abstract comment is not only very brief, but also, in most instances, an integral instead of a separate portion of the main investigation, and therefore, while indispensable to the general, is by no means wearisome to the scientific reader. The nature of the subjects included in Part I., however, rendered a more detailed examination of abstract propositions an absolute prerequisite to the practical discussion of the same ; and although these surveys of fundamental principles assume to be the vehicle of very much matter which is both new and interesting, and challenge from all parties the most careful attention, yet the reader who is versed in the elements of Political Economy may or may not regard them worthy of perusal. To readers of a more restricted knowledge they are important in the extreme. The limits of these elementary inquiries of Part I. are designated by Division First of the third and the whole of the first and fourth chapters.

CHAPTER I.

MONEY AND CURRENCY.

Money with the Ancients—The Requisites of Money—What is Money?—The Offices of Money—A Measure of Value—The Standard in the United States—A Medium of Exchange—A Producer of Value—The Relations of Money to Commerce—The Amount Needed—The Balance of Trade—Interest—The Prospective Decline in the Value of Money—The Kinds and Substitutes of Money—Convertible Currency—Inconvertible Currency, or Paper Money—The Proper Limits of both—Excessive Issues of the same.

THE opening chapter of this treatise will be devoted to a statement of the causes to which Money owes its origin, and an examination of the theoretical elements and practical uses of the same for purposes of commerce.

The history of the world presents no more forcible illustration of the success of human effort in devising means for the attainment of ends than is found in the existence of that peculiar factor of wealth which has been christened with the magnetic name of Money; and though it can "neither open new avenues to pleasures, nor block up the passages of anguish," Money, materially speaking, is the sole and universal agent which effects the permutation of property, and elevates man from his primal state of an ignorant huntsman to the higher and advancing stages of an affluent and intelligent civilization.

The human race has emerged from archaic barbarism by a well-defined series of upward gradations. The ancients of the Eastern World made their first record upon the historic page as simple followers of the chase. This finding stage, however—if such a term may be used—was of short duration. It required but a little time to develop the fact to these primitive savages that constant employment in this

direction brought far greater returns than were necessary to satisfy the only wants attendant upon their condition—namely, those of food and covering. The whole of the game obtained by this hunting life was, consequently, no longer condemned to slaughter, but the excess above that required for physical sustenance and protection was herded and tended upon the open field. In the record of this change the second general condition of these Eastern people is seen to be the pursuance of a nomadic or pastoral life. But in these early times of barbaric simplicity, as in the present age of extended culture, one advance step only begat another. The fallow land of this pastoral people soon refused to yield the necessary verdure for their ever-increasing flocks, and necessity here first inaugurated the cultivation of the soil. This epoch notes the dawn of the agricultural period, the third step in the transmission of the human race from a savage to a civilized condition. To this period the inhabitants of the earth were mere consumers of its spontaneous fruits, but when they assumed the position of tillers of the ground they opened for themselves and their successors the boundless field of productive industry. With the induction of this era man ceased to be a mere passive recipient of the perennial gifts of the soil, and by the donation of labor elected himself to a peerage with the forces of nature in persuading a responsive earth to augment its natural products and disseminate its hidden wealth. He had at last become a producer, and here stood upon the threshold of civilization.

Every transition of the Eastern ancients from these primordial stages of barbarism to the agricultural period was but a practical demonstration of the law which has a Divine source and sanction—namely, that man to live must advance, that life is progress, that repose is death. This law was now to receive an application of a double character.

The agricultural era was no sooner inaugurated, the

loiterers upon, had no sooner become tillers of, the ground, the consumer had no sooner been changed to a producer, than two difficulties presented themselves which required a simultaneous solution. Implements were necessary for the prosecution of agricultural art, and the want could be supplied only by the slow processes of invention and creation. To design and construct the requisite appliances for tillage, and then apply them to their practical purpose in the cultivation of the soil, and this, moreover, by every individual or clan, thus necessitating as many preparatory and determinate operations of tillage as there were followers of the pursuit, so trammelled the capacity of labor that it eventuated in little or no reward. Experience, the only teacher of these ignorant barbarians, soon showed them the necessity of allotting the invention and construction of tools and implements to one, and the employment of the same for purposes of tillage to another, class of their population, as distinct and exclusive vocations. The employment of the entire time of one clan in designing and creating means for, and that of another in applying these means to, the purposes of agriculture, at once surrounded the respective classes with necessities which, though imperative, were at the same time reciprocal. The artisan required the agriculturist's products of the soil for food, and the tiller of the land stood in need of the artisan's implements of tillage; consequently, each gives to the other the result of his separate and exclusive labor, and in so doing satisfies his peculiar wants. In thus disposing of the difficulties which arose with the induction of the agricultural period, these unlettered ancients established, although in a rude and restricted manner, the two great principles of political science which always go hand in hand, which are always extended or contracted in exactly a relative ratio, which, in short, are found only in a state of co-existence—the laws of Exchange and Division of Labor.

The law that life is progress soon impelled an additional advance into the boundaries of civilization, after tracing which the consideration of the subject-matter proper of this chapter will be next in order. Exchange and Division of Labor, unattended by any collateral law, were unavoidably confined within the narrow limits of giving one product for another in exact equivalents—a rule of justice, but at the same time one of inefficiency. An artisan at the end of a season of productive labor, at the time of the inauguration of these periods of restricted agriculture and exchange, would find a stock of wares upon his hands, but no food. He seeks to make an exchange of his wares for the produce of an agriculturist, that he may satisfy his wants. The party to whom he first makes application has an excess of the required products of the soil, but is not in need of any implements of tillage. Another agriculturist, however, of whom the artisan seeks an exchange, is in want of his implements of tillage, but has no excess of the required produce to give as an equivalent therefor. The artisan accordingly seeks to transfer his goods to this second tiller of the soil, and receive from him something which shall be a symbol of the value of the material and labor of which his implements are composed, and with this token of their worth to obtain from the first agriculturist the coveted food of which he has an excess. In this transaction every party thereto receives a substantial benefit. The artisan secures his means of physical subsistence, the second agriculturist obtains his needed implements of tillage, while the first makes a disposition of his excess of produce, and receives therefor a symbol of the value of the labor which produced it. The circumstances vary, and this symbol of value may be in the possession of one or another of these three, or of many different parties, as a representative of the worth of the articles with which he or they have parted. But wherever it is, it is a means for the extension of productive industry

and the disposition of superfluous fruits of labor. In this combination of the laws of Exchange and Division of Labor, and the perfection of the former by the use of a circulating symbol which should at the same time effect exchanges and measure the value of commodities, commerce takes root and civilization finds its origin. This commercial system these Eastern ancients rudely, to be sure, fully and fairly established. Their early symbols of value were uncouth and inconvenient, it is true; still, they satisfied the purposes of sale. Homer, for instance, records the fact that Diomedes purchased his armor for nine oxen, an example of a very primitive symbol of value. Farther on in history, salt, shells, sugar, and finally the precious metals, by reason of their scarcity and difficulty of attainment, are recorded as current symbols of value and worth. In the establishment of this rude species of commerce, in the homely motive of these untutored Eastern tribes in exchanging articles for something which, in the first place, should be a symbol of the value of the labor and materials of which the same were composed, and which, in the second place, should have a capacity of exchange for other articles of an equivalent corresponding to the value represented by the symbol,—in this custom, and in the motive which founded the custom, are found the two great fundamental constituents of Money, which in its various ramifications will now receive appropriate consideration.

The further treatment of this subject will consist, as already stated, in an examination of the theoretical elements and practical uses of Money. This discussion will be conducted in the following order:

- I. The Requisites of Money.
- II. What is Money?
- III. The Offices of Money.
- IV. The Relations of Money to Commerce.
- V. The Kinds and Substitutes of Money.

I. THE REQUISITES OF MONEY.

The requisites of Money are both material and potential—material, in that it shall possess certain qualities of a purely inherent, intrinsic character ; potential, in that it shall have certain external capacities, entirely separate and distinct from its materialistic attributes. Of these in their order.

1. The material requisites of Money are—(*a*) That it shall be a substance of either such scarcity or difficulty of attainment as to incur cost in its production, that it shall be an exponent of labor—in short, that it shall denote value ; (*b*) that it shall be a substance of such costly production, a symbol of such extended labor, a token of such great value, that it shall represent, in small particles, full equivalents of the various and bulky commodities of commerce ; (*c*) that it shall be a substance the production of which shall, at all times, involve a similar and corresponding amount of labor and search, and thus possess a uniform value ; (*d*) that it shall be an indestructible substance ; (*e*) that it shall be a substance easily divisible ; (*f*) that it shall be a substance possessing ductility. The reasons why an article to be used as a circulating medium should possess these material qualities are too apparent to require either statement or elucidation.

2. The potential requisites of Money are—(*a*) That it shall receive the unqualified indorsement of the entire community for the purposes of circulation ; (*b*) and, more important than all, that it shall bear a visible impress of the sanction of the Government within whose territory it is produced and disseminated.

These are the principal requisites of Money. The last named suggests an examination of the principles and modes of coinage. Such a discussion, however, would be a clear digression, not only from the scope of the present chapter, but also from the entire treatise ; and comment upon this

topic will therefore be entirely omitted, with the exception of a slight allusion to seignorage and the relative coined value of the precious metals, which will be made when "The Offices of Money" shall form the subject of investigation. The matter is referred to, in this connection, simply for the sake of logical propriety.

With due regard to the necessary qualifications of a circulating medium as above described, the nations of the entire world, from the remotest period of civilization, and from some of the later stages of barbarism even, have made use of the precious metals for purposes of Money. The exact date, however, of the inauguration of a metallic currency—of the period when man first summoned the glistening metal from its hiding-place in the inner earth, and by the name of Money, made it a crystal messenger to lay the foundations of commerce, and thereby wed the human race to the cause of civilization—of the induction of a custom which has ever since had the sanction of law,—the date of this happy and momentous event slumbers among the mysteries of the unrecorded past. History gives us no record of it, and the wondrous beauty of even "The Lost Arts" has inscribed for it no tablet upon the annals of literature.

II. WHAT IS MONEY?

The consideration of the requisites of Money has opened the path for an answer to this inquiry ; or, in other words, a definition of Money is now logically appropriate. Money, in its restricted sense, consists of pieces of metal of ascertained weight, determinate value and given fineness, bearing the impress of the sanction of Government as to its exchangeable worth, and also the authority of Government for its circulation. The further discussion of this subject, until "The Kinds and Substitutes of Money" shall engage attention, will refer entirely to a circulating medium of this restricted metallic character.

III. THE OFFICES OF MONEY.

The way is now prepared for an examination of one of the most important sub-subjects of this chapter—namely, “The Offices of Money.”

The functions of Money are threefold: 1, as a measure of value; 2, as a circulating medium or means of exchange; and 3, as a producer of value.

1. Money, it has been said, is a measure of value. It is a mere nominal measure, and nominal for the reason that its own value is subject to fluctuation and change. The ultimate measure of all value is labor, and ultimate because all value is based upon and produced by labor. A brief analysis of value makes these two principles more apparent. Value is of two kinds—value for purposes of use, and value for purposes of exchange. An illustration of these respective kinds of value may assist this investigation. A man of extended culture and refined taste obtains, by reason of his peculiar wants, at a great expense, a plot of ground which has surroundings of romantic scenery. At an additional great expense, on account of his admiration for art and a bent for unique accompaniments, he erects a dwelling and lays out his grounds. His elegant possessions are of great value, but of great value only for his particular use. This man of taste and lover of art is laid low by death. His heirs are obliged to part with their ancestor's elaborate home, and their only available purchaser may be a man who wants a house only for shelter and ground only for the purpose of cultivation; and just exactly what these beautiful possessions are worth for the purposes of shelter and cultivation is what can alone be realized from their disposal. A railway corporation, moreover, under pursuance of an authority given it by the State, in accordance with the right of eminent domain, may wish to lay its road-bed directly through these grounds that have been dedicated

to art, and the damages the corporation would be obliged to pay would simply be the value of the ground to a man of ordinary tastes and habits. The value of the particular love of the owner for these elegant possessions cannot be appreciated in money. On the other hand, a laboring man may be possessed of an ingot of rare metallic quartz. It is of no possible value to the laborer in use, but of great and determinate value in exchange. Its value is not subject to depression by any such delicate causes as affect wealth which has a mere value for purposes of use. Now, labor is the ultimate measure of the value of the elegant possessions on the one hand, and of the ingot of quartz on the other—the ultimate measure of the value of the elegant possessions, because they are worth just that amount of labor which would suffice, at an ordinary valuation, to purchase those elegant possessions for the use of a man of ordinary tastes and habits. It is, moreover, the ultimate measure of the value of the ingot of quartz, for the reason that, comparatively speaking, the same amount of labor will produce an ingot of quartz at all times and under all circumstances. Money, however, is only the nominal measure of both of these species of wealth, because, by reason of unusual productiveness or non-productiveness of mines, or collateral causes, it is itself subject to variation and change of value; while labor, speaking in the abstract, so far as its material results are concerned, will accomplish the same in a given space at all times, and under all conditions.

This train of thought has been pursued in a somewhat extended manner, because its importance seemed to demand it; and if the fact is borne in mind that Money is not the absolute, but the nominal or relative, measure of value, the further discussion of the entire subject will be comparatively unclouded. It is only necessary to add the remark that, although Money is not the absolute, it is, by reason of a

compliance more perfect than that given by any other substance to the material requisites of a circulating medium, hereinbefore noticed, the nearest possible absolute measure of value of any material token that can be produced.

The basis upon which Money rests as a measure of value is not the quantity but the cost of production. In other words, the labor requisite to produce Money, and not the quantity of Money so produced, is the constituent element which makes it a measure of value. It will be remembered, in this connection, that this entire discussion, thus far, refers exclusively to Money in its restricted signification—to metallic Money. The truth of this principle is clearly apparent. A laboring man who purchases a loaf for his frugal meal, and a prince of commerce who buys the product of a million spindles, are both required by the law of exchange to give an equivalent for the articles which have passed to their possession. Now, the equivalent for the loaf is the value of the labor which produced and cooked the cereal which constitutes it; and the equivalent for the product of the spindles is the value of the labor which bought the sheep, grew the wool and tended the process of manufacture of which the cloth is composed. The question now arises—In what way is the value of the loaf and cloth, and of the substances offered as their equivalents, to be measured? Now, labor, as already observed, is the sole constituent essence of both the cloth and the loaf. Consequently, the only exact and the only just way of measuring the value of the substance proposed as an equivalent for this loaf and cloth is to see that the same amount of labor was necessary to produce this substance as was required to create the piece of cloth or single loaf for which this substance is offered in exchange. For further proof of this principle let this affirmative be supplemented by a negative line of discussion. Let the supposition be made that the stocks of merchandise in the city of New York have a

marketable value of one hundred millions of dollars. Let it also be supposed that it requires a million of dollars, and no more, to float this merchandise through the different channels of commerce. Let this volume of circulating medium be increased till, instead of one, it shall amount to five millions of dollars. Will it require more dollars under this last condition of things to buy a bale of cloth or a barrel of sugar than it did under the first? Comparatively speaking, never! The reason is simple, and consequently entirely clear. Money, as already seen, possesses certain material as well as potential properties. These material properties give to Money an inherent, intrinsic worth. It is, itself, reducible to a commodity. The substance of which it is formed enters into many rare and coveted articles of commerce. As such a commodity it always has a determinate market value—namely, the cost of the labor which produced it; and when, therefore, in its province of a circulating medium, Money, by reason of its profuseness, ceases to realize its possessor the cost of the labor which created it, the excess immediately finds its way to the chemist's crucible or the jeweler's bench, from whence it emerges, on the one hand, to serve the purposes of science, and on the other to decorate the devotees of fashion and grace the table of a prince.

A brief allusion to what has been made the standard measure of value in the United States will properly close these remarks upon the first function of Money. At a time when this country has a paper circulation of about seven hundred millions of dollars, and, comparatively speaking, not a dollar of specie in use as a means of exchange, it may provoke a smile to note the assertion that gold is the standard measure of value of the United States. And yet such is the fact. At least, gold is the declared, if not the actual, standard measure of value in this country. Prior to the year 1853, silver and gold both formed the standard

measure of value. This law was maintained, of course, only by declaring how many grains of silver should equal one grain of gold. In other words, a constant relativity was necessitated between the two metals. The ever-varying divergence in the cost of production between these two metals, owing to success and failure in mining and to the changing demand for each for purposes of commerce, rendered the system of having two legal measures of value so troublesome and repugnant that Congress in 1853 made gold the sole standard in the United States.

The Government, moreover, charges a seigniorage for coining the precious metals—one-fifth of one per cent. for gold, and three-fourths of one per cent. for silver. The reason and object of seigniorage should perhaps receive a passing allusion. Seigniorage is the remuneration which the Government receives for coining bullion into Money. The United States formerly performed this office as a gratuity, but the system was productive of evil, and was consequently abandoned. The nature of the evil will appear in the following statement of the effect of an established system of seigniorage. It operates to enhance the price of coined bullion. For instance, if the Government, by way of taking a seigniorage for coining, puts ninety-five cents' worth of gold only into a dollar, it renders that dollar worth five cents more for purposes of Money than for commercial use. Seigniorage consequently prevents the withdrawal and melting up of specie for manufacturing purposes, and drives the worker of the precious metals to seek his raw material, if such an expression may be used, from holders of bullion, and so relieves the Government mints from repeatedly coining the same identical metal, and prevents, to this extent, disturbance in the relative quantity of circulation.

2. The office of Money as a medium of exchange, for the most part, rests upon the same fundamental principles

that have just been stated in the discussion of its first function. The examination of this second office of Money, therefore, will, to avoid repetition, be apparently, as an isolated topic, somewhat curtailed. Whatever matter, however, may seem in this connection to be wanting, will be found in the examination of the last sub-subject, and in the remarks farther on upon the relations of Money to commerce.

The necessity of a medium of exchange begins with the inauguration, and grows with the extension, of Division of Labor; and Exchange and Division of Labor, moreover, only arise when mankind occupies the position of a producer. They do not arise upon the immediate induction of a system of productive industry, but are both preceded by one other transition period. This transition era, however, is of a very brief duration, and the law which governs it is the restricted rule of barter. Barter, properly speaking, is the exchange of commodities in exact equivalents. The inadequacy of this rude and restricted system of commerce, it will be remembered, was of a twofold character. It ceased to be efficient, first, when an exchange of commodities having different equivalents was desired; and second, when, by reason of various wants, and isolated opportunities to supply such wants, it became necessary that there should be more than two parties to effect a satisfactory transposition of commodities. And thus, as necessity, in the first instance, created Exchange and Division of Labor, so in the second instance this uncompromising agent inaugurated a medium of exchange, and that medium, for reasons before noticed, was Money.

3. The third and last office of Money is that of a producer of value. This function of Money grows out of the two preceding ones. So true is this last statement that an assertion of the paradox is almost warranted that Money as a producer of value acts in an entirely passive capacity.

Whatever may have been the discussions of philosophy as to primal causes, whatever may have been the opinions which were advocated by the metaphysicians of Athens or the schoolmen of Charlemagne as to the cause of creation, certain it is that mankind dwells upon a world of matter. The mandate of The Divine Author, when He first entrusted man with the exclusive dominion of matter—"Subdue it!"—for ever has and ever will be law. The device of man may promulgate statutes and establish codes to either extend or abridge the principles of the common, which are assumed to be founded upon those of the higher, law, but this first grand injunction of Omnipotence admits of no repeal. It is a condition in the great trust-deed by which man holds the title to material earth, and is as rigid and unchangeable as the penalty attached to the crime of man's disobedience: "In the sweat of thy face shalt thou eat bread." The means for complying with the requisition of this primal command are suggested in the character of the primal curse. It is to be effected by labor. Labor creates value, but what, in the mean time, supports labor? Two things—the fruits of other labor, of antecedent toil, and the credit-power which the possession of these fruits always brings to their holder. There is no fact more fully proven by mercantile experience than that an individual who possesses a certain amount of wealth can procure upon credit commodities the value of which greatly exceed the value of his immediate possessions. The quantity of productive industry, therefore, which an individual can keep in operation is measured by the value of his capital and the extent of his credit. Now, this capital and the credit-power which springs from its possession are, so to speak, labor concreted into Money, for both are measured by and reducible to Money. Every branch of productive industry, moreover, if properly based and pursued, eventuates in a profit, and this profit is more

labor concentered into Money, which, in turn, assumes the support of new industrial enterprises. Again, the prosecution of every industrial pursuit creates a demand for other values, such as raw material, and food and clothing for the workmen which the enterprise engages. Money, then, is a producer of value in three respects: First, because its possession gives a credit-power which operates to extend the sphere of industrial pursuits; second, because in supporting labor new profits are evolved, new values created; third, because in supporting any productive industry, in supporting labor, it causes the creation of other values which the prosecution of this particular industrial pursuit demands. Money, moreover, is a producer of value in these three directions, for the simple reason that by it values are measured and exchanged. The creation of a measure of value and a medium of exchange, as already seen, constitutes the very foundations of commerce, and when we take from Money these respective offices we also rob it of its capacity of producing value. For if commodities, so to speak, cannot be put into commercial circulation, whence comes the impetus for further production?

IV. THE RELATIONS OF MONEY TO COMMERCE.

The consideration of the relations of Money to commerce is next in order. The discussion of this topic will be pursued under the following heads: 1, the amount of Money needed for commercial purposes; 2, the character of Money needed; 3, the theory of balance of trade; 4, interest.

The amount of Money needed for commercial purposes is that sum which will effect the necessary exchanges of commodities. This is a very simple proposition, but it involves questions of the most delicate and complex character. The history of our own and other countries furnishes more instances of national calamity by reason of inability

to comprehend, or unwillingness to respect, this simple proposition than can be traced to any other source. Violations of this simple maxim by undue extensions of the various substitutes for metallic Money have rendered the code commercial of continental Europe a myth, paralyzed the mercantile interests of Great Britain, and more than once within the present century have plunged the commerce of the United States into almost an inextricable state of confusion and disorder. Money is a very mysterious agent, and commerce a most delicate institution. The offices of the first and wants of the last are of a purely mutual and relative character, and whenever the two are at variance it is always by reason of violent convulsions of state or similar causes of extraneous origin. In such seasons of confusion and disorder metallic Money immediately renounces its allegiance and retires from the service of its commercial chief. The pulse of commerce is also exceedingly sensitive. It claims to be, as it is, the only infallible judge of its moneyed demands, and demurs to all external supervision of its wants in this respect. At the slightest interference in this direction it sends a note of warning with electric rapidity through every avenue of the business-world; and whenever its condition is chronicled as one of disease or disorder, it is pretty safe to conclude that its metallic servant, Money, has rebelled against this foreign influence, and retired from its peculiar field of labor, until its commercial master can give undoubted assurance that the disturbing forces have been put to flight.

The amount of Money required to effect the necessary exchanges of commodities is based upon the relative rapidity with which Money and commodities circulate. As an illustration of this principle, let the circulation of an article be taken which, from its "cash" character, militates most strongly against it—namely, flour. The flouring-mills of our wheat-growing sections of country will fill the orders

of wholesale houses of approved credit, located either upon our Atlantic or Pacific seaboard, or in any of our great commercial marts, upon what is known in mercantile parlance as "sixty days' time." Allow a period of eight days for transportation from the mills to these wholesale dealers, and the latter will, in turn, make shipments to any jobbing house of good standing which will not require more than three days for transportation by reason of the frequency of wholesale marts, upon "thirty days' time." The jobber also will make sales to his retail trade, which, by reason again of the frequency of jobbing houses, will not require more than one day for transportation, upon a similar credit of thirty days. The retailer, moreover, will divide a barrel of flour into, upon an average, sixteen packages, and distribute the same among as many of his laboring customers, to be paid for upon the first day of the month next succeeding. It will be seen that four out of the thirty days allowed for the passage of the money from the sixteen consumers to the wholesale house have been occupied in transportation. Four days more may be allowed for the money to pass from the consumers to the wholesaler, leaving twenty-two out of the original thirty days in which the money was to be in the possession of the latter. Very good! Seven days more may now be allowed for contingencies, and still keep within the letter of these several contracts; for it will be remembered that the retailer sells, not upon a month's credit, but until the close of the month in which the sale is made, until the laboring customers' "pay-day;" which, as these sales in small quantities are daily occurrences, makes an average credit of not more than fifteen days. In the exchange of this commodity it is thus seen that a barrel of flour has become the property of nineteen different individuals before any payment of the purchase-money has been made or required, showing a circulation of flour, in comparison with that of Money, as nineteen to one.

The truth of the principle claimed by this line of discussion is too apparent to require extended examination, and the argument formerly held by many authorities, that the sum of Money requisite for the exchange of commodities was one equal to the exchangeable value of all articles in commercial circulation, is entirely refuted by consistent and continuous historic facts. The amount of circulating medium in the United States, for instance, immediately prior to the late Civil War, was about \$335,000,000, not including in this estimate, of course, \$90,000,000 held by the banks in specie as a legal reserve. Upon the basis of the report of the Bureau of Statistics at Washington, it is estimated that about \$3,000,000,000 worth of commodities were in circulation in this country at that time. The gross production of the country, by exact investigation, was shown to be a little less than \$4,000,000,000; consequently, the above estimate is not an unfair one. But this \$4,000,000,000 worth of commercial products, as above cited, did not include that species of intangible commodities which are represented by professional and similar labor; so that it is safe to say that \$4,000,000,000 of commodities were at this time in circulation; and this estimate leaves \$1,000,000,000 worth of tangible commodities to be consumed without traversing the avenues of commerce, which is certainly a liberal allowance in that direction. It is consequently seen that \$335,000,000 furnished ample transportation for \$4,000,000,000 worth of commodities through the numerous and deviating paths of commerce, in addition to effecting exchanges and sales of real estate. Similar facts might be cited from English history, but such a course seems wholly unnecessary.

A discussion of the excess and scarcity of Money, and the effects of both upon commerce, logically speaking, would be next in order; but as such a condition of the Money market is confined exclusively to a paper circula-

tion, this topic will be deferred till "The Kinds and Substitutes of Money" shall form the subject of investigation. Reference is here had to this point solely for logical completeness, for so far as metallic Money is concerned, it has already been shown that, owing to its material, intrinsic qualities, and consequent determinate value for commercial purposes, any and every excess of it always finds its way into the list of commercial commodities. Upon the same principle—namely, that Money as a medium of exchange is based upon the cost of production, that is, upon the value of the labor which created it—there is never a scarcity of metallic Money, barring the single improbable possibility, if such an expression may be allowed, of the exhaustion of the mines from whence it is procured. In both cases, so far as metallic Money is concerned, the law that labor seeks that employment which yields the largest recompense bars any possibility of an excess or scarcity of a circulating medium.

The amount of Money, again, necessary for an exchange of commodities increases with the extension of Division of Labor. This proposition is stated more as a self-evident truth than as a point the maintenance of which requires discussion. It is perfectly apparent that as new offshoots are made from old branches of productive industry, an additional amount of circulating medium will be needed to effect exchanges of these new products.

This topic of the amount of Money needed for the proper exchange of commodities will pass from consideration with a single allusion to what constitutes—or rather what should constitute—the regulator of the quantity of a metallic circulating medium. As has been hereinbefore insisted, commerce is the only proper judge and supervisor of its moneyed necessities. Commerce is not a parsimonious miser, which requires a legislative guardian to gorge its reluctant coffers with mineral wealth ; neither is it a profligate spendthrift,

demanding a similar supervisory power to set a limit upon its reckless and extravagant disbursements ; but, located far above the powers that assume to watch its incomings and outgoings, with its faithful and omnipresent sentinel, Labor, noting by its flux and reflux the ever-varying localities of plenty and want, it is its own great conservator, and by a law as changeless as that which brings light and darkness with every revolution of the earth around the sun, it sends its metallic postboys to scatter the products of industry through every channel of the business-world, in just such numbers and just such localities as are suggested by the growth or wane of industrial pursuits ; and that law is two-fold—namely, that scarcity, on the one hand, enhances price and drives Money to purchase in fields of plenty, and that plenty, on the other hand, diminishes price and drives products to sell in fields of want. This law, moreover, bears upon the theory of Balance of Trade, which will soon come under discussion.

2. The next point that comes up for consideration is the character of Money required for commercial purposes. The function of Money as a medium of exchange suggests its character, in one respect at least—namely, that it should possess, as near as possible, a character of perfect stability and certainty. The dealings of the commercial world are mostly, so to speak, *in futuro* ; that is, they consist of what the law terms executory instead of executed contracts. With the exception of petty purchases for the satisfaction of every-day wants, the commodities of commerce are subjects of contracts which are to be complied with, so far as payments of Money are concerned, at some future period. Such contracts are based and predicated upon what is considered will be the value of Money at that deferred day of payment. All loans of Money for long periods are based upon this same calculation, and if by any emergency the

value of Money at the final day of execution of such deferred contracts and obligations shall be either enhanced or depreciated, the creditor gains perhaps not an unjust, but certainly an unexpected, advantage on the one hand, and the debtor a similar advancement on the other. The first characteristic Money should possess for purposes of commerce is therefore one of stability.

The second characteristic demanded of Money for commercial purposes is, that it shall be extended only so far as will enable it to measure the value of commodities upon the same relative basis as that by which such value is measured in foreign countries, provided the measure of value in foreign countries is the natural metallic, and not a local one. This proposition again brings to notice the topics of excess and scarcity of a circulating medium, neither of which, as already seen, ever occurs where such circulating medium is of a metallic character. The consideration of these two subjects is therefore again postponed till "The Kinds and Substitutes of Money" shall engage attention, when the foregoing proposition, here laid down for completeness' sake, will be restated and properly explained.

3. The relation of Money to commerce in connection with the theory of Balance of Trade—which, it is claimed, may be either a bane or a blessing—now requires examination. Of all subjects upon which political economists and legislators have held conflicting opinions, there are none which have elicited more general discussion than the theory of Balance of Trade. The public councils of Great Britain, France, Portugal, the United Netherlands and the United States have often resounded with words of hot and angry debate between the enemies and supporters of this much-mooted question, while in the humbler walks of life rigid lines have been drawn between its opponents and advocates; and still the problem divides private organizations and great

political parties which, upon almost every other topic affecting the public welfare, are in perfect harmony and concord. The theory grows out of the Protective Policy, but neither that nor the opposing doctrine of Free Trade will occupy a place in the present discussion. The immediate topic is the relation of Money to this theory. Stating the question in its prejudicial light, the theory is that excessive importations—that is, imports in excess of exports—drain a country of specie, and so impoverish it. A proper investigation of the subject will warrant the following statements: (*a*) that a country the value of whose annual products exceeds the value of its annual consumption will never for a long time import more than it exports; (*b*) that a country never enters upon a stage of impoverishment until the value of its annual products is less than the value of its consumption; (*c*) that an occasional excess of imports over exports furnishes no evidence that a country is in a state of impoverishment, but that such occasional excesses of importation are due to causes entirely extraneous from that of poverty; (*d*) that the moneyed wealth of any country is never permanently diminished by the Balance of Trade standing against it, unless consumption is greater than production.

The first proposition is a simple statement in another form of the law referred to when the topic of the requisite amount of Money necessary for commercial purposes was under discussion—namely, that scarcity, on the one hand, enhances price and drives Money to purchase in fields of plenty, and that plenty, on the other hand, diminishes price and drives products to sell in fields of want. Now, a nation may, for two, three, five or more years, while developing particular branches of productive industry or while engaged in war, make importations in excess of exports, and yet, if home consumption does not exceed production, be all the

while amassing national wealth, though in the mean time it is constantly exporting coin and bullion to make good the Balance of Trade that stands, for the time, against it. For example, let it be supposed that the annual products of the United States have a value of \$4,000,000,000 ; that the value of imports is \$350,000,000, and that of exports \$225,000,000. These, in round numbers, are very nearly the value of the products, imports and exports of this country for the fiscal year ending June 30, 1861—a year which shows a larger Balance of Trade against the United States than any other during the last decade—namely, by the above figures (which are a little in excess as to imports, and the opposite as to exports), a balance of \$125,000,000. Now, even if the consumption of the United States, upon the above basis, equals the enormous sum of \$3,875,000,000, the national ledger is simply balanced, and the country has neither made nor lost a dollar ; but by as much as the consumption of the country is less in value, upon this basis, than \$3,875,000,000, by so much has the nation added to its public wealth. That this wealth is represented by commodities instead of Money does not prove the impoverishment of the country, for the measure of the value of both the commodities and the Money is labor ; and if the forces of the latter are continued in the employment of producing commodities instead of Money—specie—their plenty, at some future day, will drive them out of the country for sale, and the flow of specie will then be inward instead of outward. It is a matter which governs itself, and so long as production exceeds consumption a nation will not for any length of time import more than it exports. The history of the United States for the last twelve years fully proves the proposition, and this at a period when our exporting trade for one-half the time was disturbed and paralyzed by civil war.

The account stands as follows :

Year.	Imports.	Exports.
1859.....	\$317,873,053.....	\$335,894,385
1860.....	335,233,232.....	373,189,284
1861.....	315,004,726.....	228,699,486
1862.....	188,902,263.....	213,069,519
1863.....	226,796,336.....	305,884,998
1864.....	309,305,955.....	320,035,199
1865.....	216,441,495.....	323,743,187
1866.....	430,770,041.....	550,684,277
1867.....	397,222,067.....	438,577,312
1868.....	349,023,682.....	454,301,713
1869.....	412,140,841.....	413,961,115
1870.....	431,950,428.....	499,092,143
Total.....	\$3,930,664,119.....	\$4,457,132,618

The above is taken from the report of the Commissioner of Statistics, and is correct. It does not include Southern imports and exports during the war, as no complete returns in those respects have yet been published.

It is thus seen, both by theory and practice, that a nation whose production does not fall below consumption will not for any length of time import more than it exports. The import and export history of this country, as seen in the foregoing table, moreover shows that this is a matter which regulates itself, on the theory that an excess of commodities in one locality will eventually, to a certain extent, change places with an excess of Money in another. The table shows that in the years 1859 and 1860, our exports exceeded our imports. In the year 1861 this was reversed, and in 1862 we again exported more than we imported. So again from the year 1863 to the year 1870 inclusive—in, however, greatly varying proportions.

The second, third and fourth statements, laid down in connection with the one which has just passed from discussion, are proven by the same line of argument which has been adduced to support the first. They will, conse-

quently, not receive a separate examination, but a little general comment, applicable to all three, will close this review of the relation which Money bears to the theory of Balance of Trade.

Balance of Trade, in a great measure, is secured by the successful establishment and prosecution of industrial pursuits—by the advancement of productive industry. That is one way. A country may, however, by refusing to make any extended importations, retain a hold upon its Money, and so ship, for the time being, more than it receives. That is another way. But a pursuance of the latter course for any length of time—that is, of refusing to import solely for the purpose of having the Balance of Trade stand in its favor—will render the road to the point where consumption exceeds production very short and easy of transit.

The golden chain of commerce encircles not one continent alone, but the entire globe. This globe has many geographical divisions, and these geographical divisions possess, in many instances, climates of an entirely different character. Their products are consequently of a most diversified sort, and each one, so to speak, has certain specialties, for the production of which the laws of Nature have granted it an exclusive monopoly—letters-patent of a climatic stamp. The peculiar products of these varied divisions are some seasons below, and again in excess of, the demand from extraneous sources. In years of plenty, thereby producing cheapness, these products will be driven out by Money from some other division where analogous causes have produced an excess of it, and *vice versâ*. In conclusion, then, the relation of Money to Balance of Trade is such that a drain of specie from a country does not necessarily argue its impoverishment. A nation never reaches a period of impoverishment till consumption exceeds production. A country whose production exceeds consumption will never, for any length of time, import more than it ex-

ports, and so have a Balance of Trade against it. Now, whether a protective policy is requisite to sustain productive industries, and so regulate this theory, is entirely another question, and is, in this connection, neither denied nor affirmed.

4. *Interest.*—The next relation of Money to commerce requiring attention is that which forms the subject of Interest. A large proportion of the business pursuits of every country are conducted by means of borrowed capital, and for the use of such capital the borrower pays a remuneration. Interest, then, may be said to be Money paid for the use of Money, and the prices which determine the extent of this remuneration—what the rate of Interest shall be—are both natural and artificial. The natural forces are those arising from the age and commercial status of nations. The artificial forces consist of arbitrary restraints imposed by statute law. These two governing elements will first engage attention, when some incidental remarks, bearing upon the subject of Interest in general, will close the examination of this topic.

The first of the natural forces which influences the rate of interest is the age of the country in which Money finds employment. Money will always command a higher rate of interest in new countries than in old, from the fact that new governments, as well as their subjects, are borrowers, while old ones are not, except in the emergency of war. Governments, except for war-uses, borrow Money only for the purpose, so to speak, of creating fixed capital. Unlike individuals, they do not hire Money to establish enterprises which are expected to yield an immediate moneyed return, but for the purpose of prosecuting projects which redound to the benefit of the entire people, which, in part, enable all the inhabitants of a country to engage in industrial pursuits from which immediate moneyed returns will be received. These uses which governments have for Money are the erec-

tion of public buildings, opening of highways, establishment of fortifications, armories and navy-yards, the building of docks, the organization of fleets, the perfection of means of navigation, etc., etc. The period required for the attainment of these ends varies, of course, in different countries and under different circumstances, but history proves that new countries occupy, upon an average, a period of full two hundred years in perfecting this material organism of government. During such periods the government demands for Money will inevitably enhance the rate of interest.

The second of the natural forces which influence the rate of interest grows out of the existence of the first. It is the age of a nation's commerce. In new countries, when industrial pursuits are in their infancy, competition is limited, profits large, the incentive to extension of business consequently great, and large rates of interest are readily obtained. As the different branches of productive industry are extended, although thereby more capital is demanded—which fact at first thought would seem to operate toward an increase of the wages of Money—the rate diminishes, because by reason of the competition the profits are reduced, and however great may be the amount of Money demanded, the earnings of a business determine the sum of Money that can be paid for capital to conduct it.

The third of the natural forces which bear upon the rate of interest is the diseased or healthy condition of a nation's productive industry. With industrial pursuits disturbed, and commerce consequently paralyzed, the rate of interest rises not so much by reason of a scarcity of Money as from the element of fear and uncertainty which capitalists entertain as to making investments. On the other hand, with industry and commerce in a prosperous condition the rate of interest usually recedes, for although, as already seen,

the amount of Money required is large, the rate of interest is governed by the rate of accruing profits.

The attempt by artificial force of statute law to determine the rate of interest for Money has been adopted in almost every civilized government, and always proved a failure. The earlier law of England made it a criminal offence to receive interest for Money to any extent. In other words, it forbid interest; but the only effect of the law was to enhance the rate the lender would have been willing to receive in the absence of the statute, by so much as he considered would remunerate him for incurring the risk of suffering the prescribed penalty. The French edict of 1766, reducing the legal rate from five to four per cent., was similarly avoided; and all the usury laws of the United States—for usury laws these arbitrary restraints of statute are—have proved entirely inoperative. The theory of a usury law is untenable, for the reason that the use of Money will bring just what the projects and business of the borrower can afford to pay; and yet, if a usury law could secure universal compliance, it would entirely put to flight one of the greatest disturbers of commercial peace—namely, speculation. The irrepressible passion of man, however, to sell his wares in the best market and at the highest possible price renders such statutes a dead letter, and when partially enforced, as they ever only are, they prejudice the national or State prosperity by driving home-capital to foreign localities for investment.

The somewhat prevalent notion that an increase in the amount of mineral wealth, of metallic Money, will diminish the rate of interest, is a fallacy. Money is measured in value by labor, and when by reason of excess it will not loan for a sufficient sum to realize the cost of the labor which produced it, it seeks employment in commerce as an article of trade.

The future rate of interest in the United States cannot,

by any possibility, be very much diminished for a long period to come. The immense amount of territory yet to be developed, the extension of our present industrial pursuits and the creation of new ones, the moneyed needs of Government,—these and a train of collateral causes render the reduction of the rate of interest in this country impossible for probably fifty years.

This somewhat extended topic of The Relations of Money to Commerce will be concluded by a brief allusion to the effect which the prospective decline in the value of Money will have in the commercial world. Since the discovery of the North American mines, their continued and increasing productiveness, added to the capacity of those of South America, Australia and the Spanish and Peruvian possessions, results in a relatively greater supply of the precious metals than is required for the combined purposes of a circulating medium and for the fabrication of metallic articles of commerce. As already seen, an excess of metallic circulating medium never creates a permanent diminution of the value of Money, so long as there is not an excess of the raw metals for purposes of productive industry. An excess of the latter character, however, denotes the limit of consumptive demand, and hence the present decline, necessarily slow, in the value of the mineral wealth of the entire world. This decline, as already indicated, cannot by any possibility be a rapid one. The demand for raw metal for the fabrication of elegant wares will not probably increase in an equal ratio with the supply, on account of the inexorable rule in the code of fashion which will allow no other definition of either beauty or taste in the matter of ornament except the element of difficulty attaching to the procurement of articles for such uses. Exhaust, or rather very nearly exhaust, the world's supply of common, ordinary granite stone, and it would appear first among the *entrées* upon every jeweler's bill of

fare who caters for the ornamental wants of the fashionable world. On the other hand, however, the supply for the purposes of a circulating medium will not bear such a proportionate increase over the demand as will be found in the uses of commerce. The task of internal improvement before the United States as a government is yet wellnigh boundless, and the development of productive industries by its people is in only an incipient stage; both of which facts will militate against the diminution in the demand for the precious metals for the purposes of Money. Mr. Bowen has collected the authorities upon this point, and treated the whole subject with his usual completeness and elegance of thought and rhetoric in his admirable work on Political Economy, wherein he estimates that at the close of the present century metallic Money will possess about one-half of the exchangeable value that it did in the year 1854. The decline will be extended over so long a period that its effect will not be particularly prejudicial to commercial pursuits. The prices of labor and commodities will advance in a ratio proportionate to the decline, and the constant depreciation will be hardly perceptible, except in two instances—those of long-deferred debts and contracts. In these cases the debtor class will gain a substantial pecuniary advantage, and the benefit of this sort which will accrue to our Government in the redemption of bonds, the payment of which is long deferred, will be by no means inconsiderable.

V. THE KINDS AND SUBSTITUTES OF MONEY.

The consideration of Money in its restricted sense—of metallic Money—is here concluded. The remaining portion of this chapter will be devoted to an examination of the various kinds and substitutes of Money, when, in the next succeeding one, the Money and Currency of the United States will engage particular attention.

All substitutes for Money are embraced under the generic term of Currency. Currency is of two kinds—that payable or convertible in specie upon presentation at the place of issue, and that payable or convertible in specie at some fixed or indefinite future period. In the description of the last species of currency is found a proper definition of paper Money, and the deduction to be made from this paragraph is that, strictly speaking, there is but one substitute for Money, namely—currency; that currency is of two sorts, convertible and inconvertible, and that a circulating medium may be made up of either metallic or paper Money, or convertible paper currency, or by a mixture of the last two.

This discussion will proceed under two main divisions:

1. Convertible Currency;
2. Inconvertible Currency, or Paper Money.

Under the first main division will be embraced the following sub-subjects, which will be treated of in their order: (*a*) The basis of convertible currency; (*b*) the theory and utility of the same; (*c*) its characteristics; (*d*) the proper amount of a convertible issue; (*e*) the effect of an excessive issue of the same upon commerce.

(*a*) The basis of convertible currency is faith in the honesty and pecuniary resources of moneyed institutions and moneyed men who make the issue of such a currency their peculiar and exclusive vocation. It is, in short, credit. In the present age of extended commerce, and amid the ever-changing shifts of fortune, with the history of traffic recording five instances of failure to one of success, it is a very common remark among the business portion of the community that they stake nothing upon chance, that they run no risks, that they look before they leap; and yet every act of their lives is a flat denial of the truth of their pet proposition. Their entire life, in company with that of common humanity, is but a game of chance, from

the opening door of the cradle to the closing portal of the grave. Mystery envelops their every step, and their very existence is shrouded with uncertainty. The thoughts and intentions of man are known only to himself and Omnipotence. No human agency can divine their character. No human law, moreover, can either compel such thoughts and intentions to be honest and upright, or devise means whereby dishonest thought and purpose can be invariably detected by outward act. It is mere faith in the purity and probity of such thought and purpose that constitutes the corner-stone of commerce, society and every human institution whatsoever. Discard this element of trust in man for man, and you sap the foundations of society, block the wheels of business, stay the progress of civilization, strike at the very roots of Christianity, and by thus forgetting that man was made "in His own image," utter a libel upon the Bible and offer insult to God.

This element of trust is peculiarly apparent in the use of a convertible paper currency. Such a currency meets with public approbation and acceptance in almost unlimited amounts, simply because the community puts faith in the ability of the issuing party to meet the obligation expressed upon the issue, and that such ability is supplemented by honest intent.

This characteristic of business faith and trust is forcibly illustrated in the dealings of the New York city banks with the brokers of Wall street; and to the credit of the latter be it said, notwithstanding they are generally accused of an opposite course, there is no class of people in the United States who live in their business so exclusively "upon honor" as they. Their honesty is measured by the banks with whom they deal within the limits of from one to a million of dollars. Instances of a Wall-street broker wishing to buy stock to fill an order to the extent of one hundred thousand dollars more than his bank balance, and of his

bank honoring his check for the amount upon the mere belief that he will buy and sell his stock and make good his balance, are of every-day occurrence.

The basis, then, of a convertible currency, speaking in the abstract merely, is credit, faith, trust. This is its general, moral, organic, and not its conventional, material basis. Discussion of the latter point belongs more appropriately to our chapter upon Banking, and will there engage attention.

(*b*) The theory and utility of a convertible currency is demonstrated in the combined argument of convenience and economy. The nineteenth century is characterized by a people who husband the resources of labor, and this trait of character finds emphatic expression in the fact of a convertible currency. It is far less bulky than specie, much easier of manipulation, and, if destroyed by fire or other calamity, results in no loss save that of temporary convenience. It has no intrinsic worth. It is merely the representative of such intrinsic value—a simple certificate that the holder is entitled to the sum of money stamped upon its face—and upon proof of destruction the issuing party will always furnish the loser with a duplicate. So long as it is convertible in specie, a paper currency is one of the happiest inventions and most efficient instruments of commerce. This is the argument of convenience. The argument of economy is twofold—one of small, the other of immense importance. The loss sustained from use in the wear of paper Money is very inconsiderable, while that resulting from the abrasion of gold and silver is quite the reverse. But the great argument of economy is the use of the surplus specie, resulting from the adoption of convertible currency, which accrues to a nation for foreign purposes and use. A convertible paper currency will only circulate within the territory of the government where it is issued. All foreign remittances must be made in specie, and

the sum equal to the difference between the amount of specie necessary for the banks of issue of a country to keep as a reserve for the conversion of their currency, and the gross amount of the circulating medium, represents the amount of surplus specie which the adoption of a convertible currency puts into the hands of a government and a people for foreign commerce.

(c) The characteristics of a convertible currency. As has been already remarked, it has no intrinsic, material worth or character. It consists in mere stamped or engraved pieces of paper, promising to pay a certain sum of money to any bearer on presentation, and that unconditionally and at all events. It differs from a promissory note or bill of exchange payable on demand in that it is payable to any holder, and in transfer from man to man does not require indorsement.

(d) The proper amount of a convertible issue. This point is self-evident and apparent. As convertible currency is instituted to supplant a metallic circulating medium, the quantity of specie in circulation prior to its adoption is the proper measure of a convertible issue. History furnishes striking instances of the violation of this plain and simple principle in the scheme for promoting the business interests of Scotland by the establishment of the Bank of Ayr, and in the financial panics in this country of 1837 and 1857. A full statement of these illustrative truths, however, finds a more appropriate and logical place under the second main division of this subject—Paper Money or Inconvertible Currency—and their full citation is consequently deferred till that subject shall engage attention.

(e) The action upon commerce of an excessive issue of convertible currency occasions distrust in the business community, which is followed by a run upon the source of issue for a conversion of the same in specie, a consequent hoarding and exportation of the latter, inevitable suspen-

sion of specie payment by the source of issue, and finally the incomparable evils of an era of paper Money—of inconvertible currency—and financial disaster. As the evil results of such an over-issue are not seen, experienced or appreciated until the point is reached, by suspension of payment, where convertible currency assumes the form of paper Money, full discussion of these evils will be postponed to its appropriate place under that subject.

2. Inconvertible currency or paper Money. An examination of the subject of paper Money involves allusion to the following subordinate topics: (*a*) The cause of paper Money; (*b*) its theory; (*c*) its characteristics; (*d*) the proper amount of such an issue; (*e*) an excessive issue of the same, and its consequences.

(*a*) History traces the parentage of paper Money to war or commercial disorder. In fact, paper Money always indicates change—it means revolution. Not to mention earlier instances, the American colonies inaugurated the system of paper Money in this country, upon the breaking out of the first intercolonial war in 1690, by a paper issue (they were novices in the art) of \$130,000; but when, in 1775, the battle of Lexington ushered in the War of the Revolution, the Continental Congress, by almost its first legislative act thereafter, directed a paper issue of \$3,000,000; and so easy and pleasant was this new way of coining Money that its authors seemed to have adopted the measure as a pastime, and upon every occasion of the receipt of intelligence of defeat of the national arms to have resorted to this diversion of Money-making as a means of public condolence, for in the year 1780 \$200,000,000 of paper Money were in circulation, not a dollar of which was ever redeemed by the Government. Within the same interval the French Revolution had papered every avenue of the commerce of France with *assignats*, and crimsoned her fields with blood. From 1789 to 1817, moreover, when Napoleon

was taxing the resources of Great Britain and Continental Europe to their utmost to thwart his schemes of self-aggrandizement, paper Money constituted the entire currency of the English realm; and the late civil war in the United States has bequeathed to its inhabitants what has thus far proved not only an irrepressible but an irredeemable legacy of paper Money to the amount of nearly \$800,000,000.

(*b*) The theory of paper Money, inconvertible currency, is entirely different from that of a convertible character. The error is so common of bringing both of these kinds of currency under the opprobrious epithet of paper Money that the distinction should be carefully taken. As we have already seen, the theory of convertible currency is sound, tenable and wholesome. It is issued as a means of convenience and economy. It makes a circulating medium of the utmost portability, and one which prevents waste of the precious metals from friction. It releases these metals from their office of a home-circulating medium for purposes of foreign commerce, and by reason of its convertibility at any time in specie is, comparatively speaking, always at a par valuation with the same, and is thus an adequate means for the accomplishment of great commercial ends. With paper Money, inconvertible currency, it is not so. It is not issued either for convenience or economy, but is a measure of blank, dire necessity. Convertible currency is issued to take the place of a specie circulation, with specie as a material, convertible basis. Inconvertible currency, paper Money, is issued to take the place of a specie circulation, with no material basis whatever. The first can always summon the precious metals to its aid—ay, to its entire and honorable discharge from its office of a circulating medium. Gold and silver are massed upon its flanks as a reserve force, and at the first note of alarm, at the first onslaught of distrust upon their paper compeer in the service of

commerce, they fly to the rescue and roll back the approaching tide of financial disaster. Not so with paper Money, with inconvertible currency. It can make no draft upon the precious metals which the latter will honor, it has no relief *corps* upon which it can call for succor, and no power behind it to answer the crimination of the commercial world. It is no *charge-d'affaires* for the temporary performance of the duties of a metallic currency. It owes allegiance to a different and a usurping power. It is an attendant upon war, in whose service metallic Money ever refuses to enlist. The origin of its existence is traced directly to this ruthless disturber of public concord. War creates distrust; distrust brings commercial disorder; this in turn is followed by a hoarding of the precious metals, which of course contracts the circulating medium, and gold and silver having resigned their office, paper Money assumes the discarded crown.

The theory of paper Money, then, is the entire creation, *ab initio*, of a new circulating medium. It is not a temporary substitute of gold and silver for purposes of economy and convenience. It is an indefinite substitute for an uncertain period, induced by necessity and absolute want.

(c) The characteristics of paper Money. For a proper definition of paper Money it is simply necessary to say that it consists of engraved or stamped pieces of paper issued and made a legal tender by governmental authority, promising to pay a certain sum of Money at some fixed or indefinite future period. It differs from a promissory note or bill of exchange in that the date of its maturity is sometimes indefinitely postponed, and also that it is always payable to bearer and transferable from hand to hand without indorsement. It is, as already seen, entirely inconvertible in specie, bears no relation to it whatever, and, from the fact of being made a legal tender for the payment of debts and purposes of exchange by authority

of law, its circulation is absolutely compulsory. This sanction of the government is all that gives it any value whatever, and the amount of value it possesses is determined, not by the ability of government to pay, but by the relative quantity in circulation in comparison to that of commodities. This statement may, at first glance, seem abortive of the truth, but a little reflection will render its accuracy apparent. It is to be remembered that paper Money, unlike metallic Money or convertible currency, has no intrinsic, material, or convertible value, and yet, for the time being, it is the measure of value of all commodities, gold and silver having been entirely withdrawn ; and hence the law of scarcity and excess applies, in this connection, with unmitigated rigor ; that is, if an excess of it is put into circulation above what is needed to effect the regular and necessary exchanges of commodities, the equilibrium between the two is destroyed, and the value of commodities is enhanced, while that of paper Money is diminished by reason of this excess—by reason, so to speak, of its adulteration. There is, moreover, no limit to the amount of its possible issue, and hence its value for any future period is entirely indeterminate, and consequently, it is not only unstable in itself, but communicates this element of instability to all industrial and commercial pursuits. This characteristic of paper Money constitutes its greatest evil. If community knew a point beyond which its issue would not be allowed, calculation could be made as to its prospective value, and so commerce could run on in its accustomed channel, but the probability that Government will authorize additional issues envelops all business pursuits, except those of the immediate present, with uncertainty. The value of commodities for the future cannot be estimated, for their value is to be governed by the quantity of paper Money which will be in circulation, which is indeterminable, and hence the establishment of a

cash basis in all sales and contracts. In other words, all contracts are executed, and not executory, in an era of paper Money. Paper Money, indeed, when once adopted during seasons of public disturbance, is almost invariably unduly extended, for the first issue operates to enhance prices of commodities, by reason of its non-convertible and non-material character; traffic is thus, by the impetus of a rising market, unwarrantably increased; more Money is demanded to satisfy its unhealthy cravings; a second issue follows, the same history repeats itself, and so on to the end of the chapter, till contraction begins and reverses the workings of the entire commercial and industrial community. The further expression of this line of thought more appropriately belongs to the topic of *The Effect of Excessive Issues of Paper Money*, and it will consequently be pursued no farther in this connection.

(*d*) The proper amount of a paper Money issue is measured by the limits of the circulating medium which preceded it. The fact that its non-convertibility will enhance the price of commodities, even though its limit, in the first instance, only equals that of the circulation which preceded it, furnishes no excuse why its issue should exceed that of such prior circulating medium in an amount proportionate to this enhancement in the price of commodities. The use of paper Money, at best, is an evil, and every issue in excess of the amount above designated only opens the door for additional issues, and consequently augments the evil instead of affording relief. The truth of this proposition has been shown in the prior, and will continue to appear in the future, discussion of this subject.

(*e*) As already indicated, an excessive issue of paper Money usually follows its adoption as a circulating medium. By an excessive issue is meant an increase of a paper Money circulation above that of the specie one which preceded it. Although the immediate effect upon commerce

of such excessive issues of paper Money is seemingly to spur it to greater activity, the final result of its adoption as a circulating medium is attended with almost innumerable and irreparable injuries to both commercial and industrial pursuits. These seeming evidences of general prosperity which accompany the induction of an extended paper Money currency owe their brief existence to the fact that paper Money has no intrinsic, material value. It will be remembered that commerce stands in no danger from an excess of metallic currency; nay more, that such excess will never be extended over only a very brief period; and the cause of both of these conditions of things is, that metallic Money has an intrinsic, material, commercial value, that such value is always determinate, and when, by reason of its excess, it cannot realize this determinate value in the office of a circulating medium—which value is the cost of the labor that produced it—it leaves this particular occupation and finds other employment in the service of science, fashion and art. The deduction from the foregoing truth is, that an excess of metallic Money, on account of its intrinsic worth, has no permanent effect upon the prices of commodities. The law that labor seeks such pursuits as offer the greatest recompense here governs the entire matter. Not so with paper Money. Even if the first issue of such a currency only equals in amount that of the specie circulation which preceded it, it will not, by reason of its inconvertibility into gold and silver, and its non-intrinsic character, maintain an equilibrium with the precious metals. As compared with them, it will, without any increase of volume above that of the circulation that preceded it, stand at a discount, and thus the standard measure of value of commodities is changed and prices of the same are consequently enhanced. This enhancement of prices increases the demand for goods; traffic is unwarrantably stimulated from speculative motives; prices continue

to advance ; more Money is represented as necessary for business purposes ; the requisition is responded to by repeated issues, and each issue, paradox though it may seem, raises the price of, and increases the demand for, commodities, and lowers the price of, and increases the demand for, Money. The law that labor seeks that employment which offers the greatest recompense has no control here whatever. Paper Money, intrinsically speaking, costs nothing, will sell for nothing ; but since, for the time being, it is the principal measure of value, the law of scarcity and excess holds exclusive sway over its various relations to commerce.

This apparent prosperity which an era of paper Money produces inspires a people with false hope, and until reaction sets in gives great popularity to the government of such particular periods.

When "The Relations of Money to Commerce" formed the subject of examination, it will be remembered that the proposition was laid down that "one of the characteristics demanded of Money for commercial purposes is, that it shall be extended only so far as will enable it to measure the value of commodities upon the same relative basis as that by which such value is measured in foreign countries, provided the measure of value in foreign countries is the natural metallic, and not a local one." As this law is applicable only to a paper Money circulation, the examination of the same was postponed till the discussion of the last-named topic. The proposition will now receive attention. If stated affirmatively, it amounts to this: A redundant paper Money currency fails to measure the value of commodities upon the same relative basis as that upon which such value is measured in foreign countries, where the measure of value is a metallic one, and consequently works injustice. Indeed, the principal evil of paper Money—one that overshadows all others—is found in this connection. The law will consequently receive a careful illustration.

Let it be supposed that the States of Massachusetts and Illinois are separate and independent nationalities. Let the further supposition be made that the circulating medium of Massachusetts is specie, while that of Illinois is paper Money, and of double the volume necessary to effect the proper exchanges of commodities. Now, Massachusetts, in a comparative sense, is strictly a manufacturing and mercantile State, while Illinois is both a manufacturing and mercantile, and also largely an agricultural State. It is moreover seen that Illinois is the State, by the supposition, which has an unhealthy, excessive local circulating medium. As Illinois, also, is largely an agricultural, and Massachusetts a commercial State, a moment's reflection will make the fact apparent that the former must find in the latter, by the hypothesis, a market for the greater portion of her agricultural products; yet a portion of these products will be sold in her own, and a portion in the Massachusetts market. Now, what is the governing power that will fix the price of the agricultural products which Illinois sells in her own markets? Clearly, the price which will attach to these products for the purpose of shipment to Massachusetts. This is an undeviating law of commerce; that is, that when the greater portion of the particular products of a country find a market abroad, the price of the small portion sold for purposes of home consumption will be governed by the price for shipment, for the home purchaser is master of the situation; his position is, "Sell me what corn I need for one dollar per bushel, or send it abroad; that is as much as you can get in the foreign market." In other words, the price where the major portion of a product or manufacture finds a market fixes the price for the residue. Returning to the illustration, the price which Illinois will obtain for produce sold in her own market will be measured by the specie standard of Massachusetts, and the premium on specie in Illinois will not have increased by more than

one-fourth the relative ratio with which the value of her own currency has depreciated. Now, her own paper Money, by the hypothesis, is double its necessary volume ; so that, by the law of scarcity and excess, which alone applies in an era of paper Money, as already seen, the price of articles which find an *exclusive* market within her territory is increased by about the same ratio as her currency is depreciated. In this state of things the farmers of Illinois sell their produce by a measure of valuation thirty-seven and a half per cent. less than the one which affixes the price to articles sold *exclusively* in her territory, and of which they are daily purchasers. That is, with specie at a premium of twenty-five per cent., the Illinois farmer sells a bushel of corn for \$1 in gold, or \$1.25 in currency, and pays \$2 for an article sold exclusively in the Illinois market (the Illinois paper currency being double its necessary volume), which cost the owner no more than the bushel of corn did the farmer.

The only assumption in the foregoing illustration which has not been proved is, that with the currency of Illinois depreciated 100 per cent., the premium on specie will not have advanced more than 25 per cent. Commercial history proves that the premium on specie will never advance in a relative ratio with the decline in the value of redundant paper Money. It will not for the following reason : Specie and paper Money, so to speak, are in the market for sale. The price of the latter, having no intrinsic value, will be governed entirely by the law of scarcity and excess, and will sell for commodities upon the basis of an excessive or diminutive supply, but the former having an intrinsic value, its price, as a circulating medium, is governed, not alone by the law of scarcity and excess, but also by what it is worth as a commodity of commerce. Its value for the purposes of commerce, which is the cost of the labor that produced it, operates as a check, to a certain extent, against the increase of its value as a circulating medium

over that of a redundant currency. That this comparative increase—namely, 25 per cent. by the hypothesis—is a fair, and more than a fair allowance, take the present state of things in this respect in the United States for an example. The paper currency in this country at the present time (1871) is very nearly 50 per cent. above its necessary volume. This statement must be here taken upon trust. Proof of this assertion may be found in the next succeeding chapter. The average redundancy for the last eight years will considerably exceed this estimate. This redundancy of currency for the last five years has enhanced prices of commodities sold exclusively in this market from 40 to 100 per cent., yet the average premium on gold within this period has not exceeded 15 per cent.

A Free-Trader will argue in this connection, "Let the Illinois farmer buy all his supplies abroad, where he sells his produce, and where the measure of value is the same as that which he sells by, and if there is no tariff he suffers no injustice." This argument will be examined in its proper connection farther on.

The peculiar condition of things resulting from the violation of the proposition just illustrated may militate against the interests of other classes of people besides the agriculturists; they were merely employed in the foregoing illustration as the most convenient subjects, by the hypothesis, to prove the truth of the general law.

The evils arising from the excessive issue of paper Money bear with particular hardship upon the laboring classes, salaried men and all parties living upon fixed incomes, such as accrue from investments made prior to the era of paper Money. The wages and salaries of the first two never increase with the same relative rapidity with which prices of commodities advance, and the income of the latter is measured either by the premium on gold, which, as already seen, does not advance in a ratio equal to the de-

cline in value of paper Money, or, and very frequently by the value of the redundant currency at the time of payment.

The final evil of an excessive issue of paper Money is seen in the unavoidable commercial disturbances usually attendant upon a return to specie payments. This return is to be effected only by an assimilation of the value of the redundant currency to that of gold and silver, and this equalization of value can be established only by a contraction of the paper Money circulation. Such contraction—the law of scarcity and excess still applying—depreciates the value of commodities and enhances the worth of the paper currency, so that holders of merchandise, on the one hand, and obligors on deferred contracts on the other, together with the entire debtor class of community, are subjected to loss, disadvantage, and, in many cases, complete and inevitable ruin. Each individual failure furnishes both cause and pretext for others, till at last the entire community, if such contraction is unduly hastened, is enveloped in financial disaster. Distrust everywhere supplants the ill-founded hope which attended the inauguration of the excessive issues of a paper currency, and the ruling power itself is often compelled to lay down its sceptre to appease the clamor of an indignant and revolutionary public.

Citations from history, giving painful evidence of the extent and magnitude of these evils of a redundant paper currency, are to be had both in ancient and modern annals. The Bank of Ayr scheme for advancing the business interests of Scotland was based upon the idea of supplying the commercial world with currency to any limit within the value of all commodities offered in exchange. The result was inevitable. The commercial marts of Scotland were in the end paralyzed with stagnation; the country was buried in financial disaster; and the colossal banking-house above named perished amid the general ruin.

The financial panic in this country of 1837 had its origin in this same evil of a redundant currency. The surplus coin in the United States Treasury, resulting from the collection of imports and the sale of public lands, had reached the sum of \$28,000,000. A measure of Henry Clay to distribute this surplus among the States had failed in the preceding session of Congress, but in the winter of 1836 a bill was passed providing for the "deposit" of this sum with the several States, on the basis of the representative population, subject to the call of the General Government. The charter of the United States Bank, moreover, expired shortly after, and as a substitute for this financial institution, which had a capital of \$35,000,000, State banks were established with a circulating issue of fully four times the extent of that of the preceding year, for not only was the void occasioned by the closing of the National Bank filled, and more than filled, but in addition to this banking institutions were established throughout the entire country, with the \$28,000,000 "deposited" with the States as a basis and specie reserve. The result constitutes a record of history familiar to every reader of our political annals, and gives indubitable proof of the evils of a redundant paper currency.

The commercial convulsion in the United States of 1857 can be traced to somewhat similar causes. The opening of the California gold-mines nearly ten years prior to that date resulted in a great increase of banking facilities. The consequent redundant circulation enhanced the price of commodities; speculation was consequently induced; the mercantile world bought beyond their means, and in 1857, when these banking facilities were curtailed by reason of a diminution in the supply of California gold, prices fell, the markets were stagnant, sales were impossible, obligations matured, and a general suspension followed.

The discussion of Money and Currency in the abstract is

here concluded, and the following chapter will be devoted to an examination of the present condition of the Money and Currency of the United States.

CHAPTER II.

THE MONEY AND CURRENCY OF THE UNITED STATES.

The Subject Classified—History of our Present Circulating Medium—The Character of our Circulation Prior to the Rebellion—The Status of Business at its Outbreak—The Legal-Tender Notes—Issues of—Effect of the same upon Business—The Three-per-cent. Certificates—More Bank Currency demanded—"Equalization" of the same attempted—Gold Banks—Statement of Money in Circulation at the Close of the Year 1871—Criticism of the Legal-Tenders—Action of the United States Supreme Court in reference to—Secretary of the Treasury no Authority to make Further Issues of—What they Cost—Amount of Circulating Medium needed in the United States at the Present Time—The Present Volume of Circulation Fifty per cent. in excess—Evils of the Present Paper Circulation—They constitute a Narrative of Indescribable Suffering—The Fraud connected with Mutilated Currency—These Evils bear mostly upon the Laboring, Salaried and Agricultural Classes—Resumption of Specie Payments—How to be Effected—Senator Sumner's Plan Criticised—Compound-interest Notes not Wanted—The Retirement of our Legal-Tenders the Proper Means of Resumption.

THE opening remarks of the preceding chapter traced the causes which led to the establishment of a circulating medium for the purpose of exchanging commodities and measuring their value, and of the universal adoption of Money as an agent for the performance of these delicate and important functions. The line of discussion then assumed for the treatment of the subject by which that chapter is entitled consisted in an examination of the theo-

retical elements and practical uses of Money. This examination was initiated by a subdivision of the same into the following-named topics: the requisites of Money; what is Money? the offices of Money; the relations of Money to commerce, and the kinds and substitutes of Money. These topics in their various ramifications then received attention in their respective order, and an application of the principles which were deduced from that discussion will now be made to the present condition of the Money and Currency of the United States.

The circulating medium of the United States at the close of the present year (1871) consists, with the exception of a trifling amount of nickel and copper coin, entirely of paper Money. The investigation of the present status of this paper circulation now proposed, and the results flowing therefrom, will be conducted by a discussion of the following topics—namely:

- I. The History of the Present Paper Money of the United States.
- II. The Legal-Tender Notes.
- III. The Amount of Circulating Medium Needed in the United States at the Present Time.
- IV. Evils of the Present Paper Circulation.
- V. Resumption of Specie Payments.

I. THE HISTORY OF THE PRESENT PAPER MONEY OF THE UNITED STATES.

Immediately prior to the outbreak of our late civil war the entire banking business of this country was carried on by institutions organized and operating under special or general incorporating statutes of the several States wherein such institutions were located. Each of these State banks, in addition to the exercise of the functions which alone legitimately belong to banking institutions—namely, those

of receiving Money on deposit and discounting commercial paper—issued a limited amount of notes convertible in specie at their respective counters or at some general bank of redemption. The circulation of each bank bore a certain proportion to the amount of capital invested, and each institution was required by its charter to keep a given amount of specie in reserve for the conversion of the same. The sum-total of these State bank-notes in circulation at the opening of the year 1861 amounted to \$190,000,000. The amount of specie held in reserve for the conversion of this note issue was about \$90,000,000. In addition to the \$190,000,000 of convertible currency issued by the State banks, there was also in circulation, by the nearest possible estimate, about \$145,000,000 in specie. It is thus seen that the entire circulating medium of the United States in the spring of 1861 amounted to only about \$335,000,000. Of this sum it has been predicated that about \$275,000,000 were in circulation through the North, or, stating it more exactly, through the loyal as distinguished from the disloyal section of the country. This estimate is only an approximate, but yet, as generally conceded, very nearly a correct one.

The early summer of 1861, owing to the distrust occasioned by the opening of hostilities, was a season of general depression of business. Trade was stagnant, manufacturing pursuits even were for the moment paralyzed, prices declined, and specie, in pursuance of its traditional antipathy for the service of a people engaged in war, summarily divorced itself from the convertible currency to which, by a long peace, it had been wedded, hastily retired from the office of a circulating medium, and for the most part either sought shelter in the hands of the Money-hoarders that ever accompany the progress of arms, or took hasty passage beyond the boundaries of the scene of conflict. The immense requisitions of the Government for army supplies

and ammunition soon, however, gave a fresh impetus to the greater portion of industrial enterprises; prices advanced by reason both of the contraction of the currency caused by the retirement of specie from circulation, and also on account of the increasing demand for commodities induced by governmental orders; so that when Congress assembled in December, 1861, the commercial portion of community were clamoring for loans with which to prosecute their rapidly-increasing business. In the absence of specie to protect their notes, the State banks feared to respond to these demands for loans, so that in January, 1862, Government having taken the initiative, these institutions followed the example, and specie payments throughout the country were suspended.

By the retirement of specie the circulation of the loyal section of the country was at least diminished by the sum of \$100,000,000, and the demand for loans just referred to was reasonable and just, even if there had been no increase in the value of commodities in commercial circulation. The State bank-notes, moreover, were clearly illegal after January, 1862, for they were no longer convertible into specie, as required by the charters of these institutions.

In view of these facts, Congress, on the 25th of February, 1862, authorized the issue of \$150,000,000 of legal-tender notes, and as this amount of paper Money only equaled, or at most was but a very little in excess of, the quantity of specie which had been retired from circulation, the measure provoked little or no criticism from the major portion of the community. It merely supplied the demand of the business community for loans with which to prosecute their various and rapidly-extending enterprises.

The enormous requisitions of the Government for supplies and military equipments soon again rendered it necessary for Congress to devise further means for the payment of its obligations, and accordingly, whether wisely

or not, on the 11th of July, 1862, an additional issue of \$150,000,000 of legal-tender notes was authorized. The \$150,000,000 of these notes issued under authority of the act of the 25th of February, 1862, were of a denomination not less than five dollars each, but the act of July 11, 1862, directed that at least one-third of the \$150,000,000 to be issued thereunder should be of a denomination less than five dollars, but no part of the same should consist of notes less than one dollar.

The State banks were still in operation, and this last issue of \$150,000,000 of legal-tenders so inflated the currency that prices of all commodities rapidly advanced, and the small remnant of specie that had not prior to this time disappeared was now entirely driven out of circulation by this depreciated currency. The country was thus left without any circulating medium whatever in sums less than one dollar. Congress, accordingly, July 17, 1862, in the teeth of its prohibition to that effect in the act of the 11th of the same month, authorized an issue of fractional currency, and (not to recur to the separate issues of this particular species of currency again) additional issues of the same were authorized March 3, 1863, and June 30, 1864, all of which have amounted by present returns to the aggregate sum of \$39,166,916.08. This additional increase to the already inflated currency of the country operated to still further enhance the prices of commodities and depreciate the value of the paper circulation. The colossal proportions which the war was almost daily assuming moreover created a constant augmentation of the moneyed necessities of the Government, and accordingly, March 3, 1863, Congress authorized a further issue of \$100,000,000 of legal-tenders, restricting the denomination of the same to notes of not less than one dollar.

The act of July 11, 1862, directing an issue of \$150,000,000 of legal-tender notes, also contained the fol-

lowing provision—namely: “That the Secretary of the Treasury is authorized to receive deposits, under such regulations as he may prescribe, to such amount as he may deem expedient, not exceeding \$100,000,000, for not less than thirty days, in sums not less than \$100, at a rate of interest not exceeding five per centum per annum; and any amount so deposited may be withdrawn from deposit at any time after ten days’ notice, on the return of the certificate of deposit. And of the amount of United States notes authorized by this act, not less than \$50,000,000 shall be reserved for the purpose of securing prompt payment of such deposits when demanded, and shall be issued and used only when in the judgment of the Secretary of the Treasury the same or any part thereof may be used for that purpose.”

About \$42,500,000 of this issue of legal-tenders were appropriated to the purpose indicated by the foregoing provision, so that the aggregate amount of legal-tender notes put in circulation by the three acts hereinbefore cited and subsequent revisory ones was \$357,500,000. It is a mooted question whether the Secretary of the Treasury still has a discretion to issue \$50,000,000 more of these notes under the act of July 11, 1862. This question will receive discussion farther on.

The same causes heretofore cited—namely, continued inflations of the currency, consequent rise in prices of commodities and decline in value of the circulating medium, together with the ever-increasing needs of the Government—resulted in the authorization by Congress, March 3, 1863, of an issue of compound-interest notes, of a denomination not less than ten dollars, bearing interest at five per cent. per annum, payable every six months, and a legal tender for their face. The limit of the proposed issue was \$400,000,000. \$150,000,000 of these notes were issued prior to May 1, 1864, but on the 30th of June of that year

this issue was recalled and another substituted in its room, bearing interest at six per cent. per annum; which issue, before January, 1866, amounted to nearly \$225,000,000. These notes matured in 1867, and have since been canceled, with the exception of about \$800,000, which at the close of the present year (1871) still remain in circulation.

On the 25th of February, 1863, the National Banking System was established by Congress, giving to institutions which should organize under the law an aggregate circulation of \$300,000,000. The State bank circulation was still extant, but was prospectively repealed, so to speak, by this act, which imposed a tax of ten per cent. on the circulation of these institutions, to take effect after July 1, 1866. This brings our narrative to the close of the war, and a year later, in the spring of 1866, with a portion of the \$190,000,000 of State Bank circulation still extant, \$357,500,000 of legal-tender notes, a portion of the authorized \$300,000,000 of National bank currency, \$40,000,000, nearly, of fractional currency, together with demand and compound-interest notes, the paper Money of the United States amounted to the colossal sum of about \$900,000,000.

The National banks were required by the act which created them to have on hand a certain amount of either legal-tenders or other lawful Money of the Government as a reserve fund for the redemption of their circulation and payment of deposits. The compound-interest notes issued under the act of March 3, 1863, had passed, in a great measure, into the possession of these banks, who had held them as a reserve fund instead of legal-tenders, by reason of the fact that the former yielded an interest of six per cent., while the latter afforded no return whatever. When these notes matured in 1867 the banks had sufficient influence upon legislation to secure the enactment of the act of March 2 of that year, which authorized the redemption of

these notes to the extent of \$50,000,000 in certificates of indebtedness, to be issued by the Secretary of the Treasury, payable on demand and bearing interest at the rate of three per cent. per annum. That is, by this act of March 2, 1867, an issue of \$50,000,000 of these certificates was authorized to take up an equal sum of compound-interest notes. This issue of certificates passed mostly to the possession of the National banks, which at the close of the present year (1871), still hold a portion of the amount now outstanding as a partial reserve fund for the purposes above named.

They hold them as such a reserve fund instead of legal-tenders, for the same reason that they held compound-interest notes in preference thereto—namely, that the certificates yield interest, while the legal-tenders do not.

By an act of July 25, 1868, an additional issue of \$25,000,000 of these three per cent. certificates was authorized, thus swelling the sum-total thereof to \$75,000,000.

During the winter of 1869 and 1870 the Western portion of the country insisted that it had not a sufficient circulating medium for the prosecution of its ordinary commercial and business pursuits. The old State banks, whose circulation, it will be remembered, was to be taxed at the rate of ten per cent. subsequent to July 1, 1866, had mostly all reorganized under the National Bank Act, so that the entire banking business of the country was, and had been for about four years, entirely under the control of the General Government. In response to this sectional clamor for more currency, Congress, on the 12th of July, 1870, passed an act of which the principal features are as follows: A further issue of \$54,000,000 of bank currency was authorized, in addition to the \$300,000,000 already in circulation. This \$54,000,000 of additional currency was to be issued exclusively to new banks which should organize in the territory where the volume of circulating medium was

alleged to be insufficient, provided such institutions should organize and demand such currency within the space of one year from the date of the passage of the act; otherwise this additional currency should be issued to banks already organized in the districts where the amount of currency was deemed inadequate for business purposes, if such institutions so desired. The act provided, moreover, that with every issue of currency as thereby authorized the Secretary of the Treasury should call in, redeem and cancel a like amount of the three per cent. certificates of the issue of March 2, 1867, and that no National bank should thereafter have a circulation in excess of the sum of \$500,000.

This act also provided for "an equalization of the currency," by directing that after the additional issue of \$54,000,000 of the same, provided for as before described, should have been taken by the National banks, \$25,000,000 of bank currency should be withdrawn from banks in localities where there was an excess, and be distributed among banks in localities where there was a scarcity of circulating medium. The scarcity and excess were to be ascertained by the census of 1870. At the close of the present year (1871) only about \$25,000,000 of this additional issue of bank currency have been taken either by old or new banks, consequently there has been no "equalization of the currency" as provided by the act of July 12, 1870. The reason why the entire \$54,000,000 of additional currency has not been taken by the banks will be considered farther on.

This act, moreover, authorized the organization of gold banks, which might issue notes of not less than five dollars each, payable in gold, the amount of such issue not to exceed \$1,000,000. Every bank so organizing was, moreover, obliged to hold in its vaults a sum of gold and silver equal to twenty-five per cent. of the amount of its circulation, as a reserve fund for the redemption of the same.

This redemption was to be further secured by a deposit of Government securities with the Treasury in the same manner as in the case of currency banks. Only two such banks at the close of the present year (1871) have been established—one in Boston and the other in San Francisco—and their aggregate circulation at the same period amounts to \$520,000.

This completes a general historic outline of the present paper Money of the United States. It has been somewhat extended, but unavoidably so if a clear and definite statement of the nature and amount of each paper issue is at all desirable. Allusion has been had to the National banks only as their creation has swelled the volume of our paper Money. The only omission that has been made is of the old demand and Treasury notes of 1861, the temporary loan and one-year certificates of 1862, and the one and two-year notes of 1863; all of which do not amount to but about \$400,000. The National banking system itself, as already announced, will form the subject of a separate chapter of this treatise.

A statement will now be made of the amount of paper Money in actual circulation in the United States at the close of the year 1871, when the further line of discussion will be pursued as already indicated. It will be noticed that only \$24,703,000 of three per cent. certificates are included in this statement. The gross amount of these certificates still extant at the close of the present year (1871) is \$31,883,000, but \$7,180,000 of this sum are held by the National banks as a partial reserve fund, thus reducing the amount in actual circulation to \$24,703,000, as above indicated. The amount of compound-interest and legal-tender notes included in this statement is based upon a similar calculation. The gross amount of the latter still extant at the time above stated, as already seen, is \$357,500,000, but about \$107,000,000 of these notes are also held by the

National banks as a reserve, thus leaving only \$250,500,000 in actual use as a circulating medium.

Paper Money in Actual Circulation in the United States at the close of the year 1871.

Legal-tender notes	\$250,500,000.00
National bank currency.....	325,466,862.00
Fractional currency.....	39,166,916.08
Compound-interest notes.....	768,600.00
Three per cent. certificates.....	24,703,000.00
Total.....	<u>\$640,605,378.08</u>

An examination of the practical bearings of the circulation of this immense volume of paper Money upon our commercial interests will be made farther on in its appropriate place; the foregoing remarks are merely by way of narrative.

II. LEGAL-TENDER NOTES.

The only extended discussion that remains to be pursued for the purposes of the present chapter is that which bears upon the three concluding topics—namely: “The Amount of Circulating Medium needed in the United States at the present time,” “Evils of the present Circulation,” and “Resumption of Specie Payments.” A little additional comment upon one or two phases of that portion of our paper Money known as legal-tender notes, which could not find an appropriate place in the narrative of our circulating medium just concluded, seems, however, almost indispensable.

The first issue of \$150,000,000 of legal-tender notes in the spring of 1862, as already observed, was a measure of necessity, commendable for its wisdom and in no way censurable for extravagance. It merely filled the void in our circulating medium occasioned by the retirement of specie from circulation, or at most did not inflate the currency above \$25,000,000. These notes are theoretically,

though not practically, payable on demand. The spirit and letter of the act which created them evidently intended that their existence should be a short one. The true character and scope of the issue, and the temporary purpose it was intended to serve, were fully appreciated by a provision of the original act, which made these notes convertible at any time into a six per cent. United States bond. In other words, the Government, for the time being, for the purpose of serving its immediate necessities, forced a loan from the people without interest, with the understanding that this loan might be funded in a Government bond, bearing regular legal interest, as soon as the same could be properly matured and put upon the market for sale. This wise provision was subsequently repealed, and the entire amount of the several issues of these notes, with the exception of those held as a reserve by the National banks—namely, \$250,500,000—is still traversing the avenues of commerce, shamelessly begging, yea, forcibly taking shelter from every member of the community, so many libels upon the credit and good faith of the Government, unblushing and omnipresent heralds of a policy which, for nearly a decade, has been a continued subject of public scandal, an object of merited crimination, and a disgrace upon the historic and financial annals of the United States.

The action of the United States Supreme Court upon the constitutionality of the measure which authorized the emission of these legal-tenders has been singularly vacillating, undignified, non-judicial, if not entirely irregular. In the spring of 1870 a case designed to test the constitutionality of the act was brought before this tribunal, fully, ably and exhaustively argued, and a decision rendered which held the measure inapplicable to all contracts made before its enactment, and of binding force as to all contracts subsequent thereto. This decision met the approval and indorsement of the commercial world and legal pro-

cession, but in the spring of 1871, as generally conceded, for the seemingly absurd and ridiculous reason that the decision of 1870 was not promulgated from a full bench of the court, a rehearing of the case was ordered, and the decision of 1870 reversed, to the extent of making the act applicable to all contracts antecedent to the date of its enactment; and if constitutional as to all contracts prior, it is, *a fortiori*, as to all subsequent to that date.

By this decision the Supreme Court assumes the position that the validity and binding force of its decisions depends upon the number of judges that sit upon its bench (and it never sits without a legal quorum, so to speak), and the highest judicial authority of a people who claim to be the farthest advanced in civilization, the science of government and the maintenance of Christianity, declares a doctrine to be good morals and sound law which allows a man who has incurred indebtedness to the amount of a thousand dollars to obtain a legal discharge from the same upon payment of one-half or two-thirds the sum, notwithstanding his ability to cancel, and more than cancel, the entire amount of his pecuniary liabilities.

The discussion of the constitutionality of this measure is foreign to the purposes of this chapter, and perhaps the foregoing allusion to the action of the Supreme Court is also irrelevant, but it seemed to demand a passing notice.

It will be remembered that by the act of July 11, 1862, which authorized the issue of \$150,000,000 of legal-tender notes, the Secretary of the Treasury was directed to receive deposits of sums not less than one hundred dollars, the gross amount of which should not exceed \$100,000,000, at a rate of interest not exceeding five per cent. per annum, for a period not less than thirty days; for which he was to issue a certificate, payable at any time upon ten days' notice; and "that not less than \$50,000,000 of this issue of greenbacks shall be reserved for the purpose of securing

prompt payment of these deposits when demanded, and shall be issued and used only when in the judgment of the Secretary of the Treasury the same or any part thereof may be used for that purpose." Under this act such deposits were made, such certificates were issued and afterward redeemed, in the manner above indicated, in the sum of nearly \$50,000,000, and yet respectable authorities hold that the Secretary of the Treasury has still a discretionary power to issue \$50,000,000 more legal-tenders for the purpose of redeeming the three per cent. certificates issued under the acts of March 2, 1867, and July 25, 1868. These last-mentioned acts give to the Secretary of the Treasury no such authority, and as the act of July 11, 1862, directs such an issue "only when in the judgment of the Secretary of the Treasury the same or any part thereof may be used for that purpose"—that is, for the redemption of certificates issued under this act, and not for those to be issued under distinct and subsequent ones, which make no allusion to the act of 1862—the power of the Secretary in this respect would seem to be exhausted. If not, an express statute forbidding any exercise of such discretion would seem eminently proper, in order that the will of one man shall not, at some future day, constitute sufficient reason for swelling the volume of this most pernicious portion of our circulating medium, when every dollar of it should have been long since funded or withdrawn.

It has always been a favorite argument with the defenders of the legal-tenders, ever since their emission, that they cost the Government nothing as a circulating medium. In other words, the supporters of this measure have taken pride in declaring that the Government has made a forced loan from community, without interest, to the extent of \$357,500,000, and that the consequent saving of about \$25,000,000 of interest annually is an end which justifies the objectionable, not to say illegal, means. Leaving the

moral aspect of the question out of consideration, the legal-tenders do cost the Government, under its present financial policy, about \$5,000,000 per annum. The Secretary of the Treasury, ever since the close of the war, has kept idle in his vaults, upon an average, full \$80,000,000 in gold. The only conceivable reason for the retention of this vast amount of specie, and the only one which the finance department has ever assigned for the non-employment of this immense hoard, is that it is needed to protect the exchangeable value of the legal-tenders in circulation. The reasoning is, that the Government must control a larger amount of gold than is possible for gold speculators to buy up, and thereby, by being able to throw gold upon the market when necessary, prevent its being "cornered" by the "operators," and in so doing also render the depreciation of the legal-tenders impossible. That is, with gold in the hands of speculators the premium upon the same advances, the breach widens between the value of specie and our sole legal-tender in a paper form, the measure of value of commodities is disturbed, and the commerce and industries of the country are put in jeopardy, unless the Treasury has sufficient gold for sale to ward off the danger! Possibly true. Now, of the \$357,500,000 of legal-tenders which have been issued, the National banks hold, at the close of the present year (1871), about \$107,000,000 as a partial reserve to protect their circulation and deposits, so that the gross amount of this species of our paper Money virtually used as a circulating medium at the time above stated is not more than \$250,500,000. The deduction, then, is that for the use of this amount of legal-tenders the Government annually pays a sum equal to the interest upon \$80,000,000 of gold—namely, \$4,800,000. This sum is of course annually compounded, for if the Government appropriated this annual excess of \$80,000,000 of gold to the redemption of six per cent. bonds, there would be a yearly saving of

interest upon the interest of \$80,000,000, in addition to interest upon the principal sum itself.

Another pet measure of the legal-tender theorists is to withdraw the \$325,000,000 of National bank circulation and issue additional legal-tenders in its room. They claim that the Government is losing from fifteen to twenty millions of dollars annually, by paying the banks interest on the bonds which the National Bank Act requires these institutions to hold as an ultimate fund for the redemption of their circulation. In other words, they are not satisfied with taking \$20,000,000, the amount of interest saved by the forced loan of \$357,500,000 of legal-tenders, annually from the community without any consideration, but, if possible, wish to double the sum. There has been waged, indeed, for the last six years, an unremitting warfare between the National bank circulation and the legal-tenders. Each one is constantly accusing the other of the evils resulting from our present redundant currency.

As the latter, in this contest, are peculiarly the aggressive party, and as the full investigation of the subject would involve a thorough examination of the theory and practical workings of the National banking system, the discussion of the topic finds a more pertinent and appropriate place within the limits of the chapter of this treatise which is partially devoted to a thorough consideration of this system. The preceding paragraph is merely the statement of a fact which logical accuracy demanded should be made under this sub-subject of legal-tender notes, but argument, pro or con., would in this connection be out of order. The statement may here be taken upon trust that the claim of the legal-tender theorists in this direction is entirely untenable, and the proof of the proposition may be found in the chapter above designated. It is an attempt to extend the issue of a species of currency which works an actual robbery of the public.

III. THE AMOUNT OF CIRCULATING MEDIUM NEEDED IN THE UNITED STATES AT THE PRESENT TIME.

The statement will probably meet with the approval of the entire business community that in the spring of the year 1861, prior to the commencement of hostilities, the amount of circulating medium in the United States was abundantly sufficient to satisfy all legitimate demands for Money. This amount of circulating medium, as already seen, was about \$335,000,000. The gross amount of products for this year, moreover, was seen to be \$4,000,000,000. It has also been estimated that \$1,000,000,000 were paid for intangible products of industry, so to speak, such as professional labor. If \$1,000,000,000 worth of the products of that year is set aside for immediate consumption without having first traversed the avenues of commerce (and that is a very liberal estimate), it is seen that \$4,000,000,000 worth of both tangible and intangible products of industry was in commercial circulation during the year 1861. In addition to this, exchanges of real estate were effected during this year to the amount of about \$1,200,000,000, so that \$5,200,000,000 represent the aggregate moneyed value of all species of property which was bought and sold in 1861; and the purchases and sales were effected by the means of \$335,000,000 of specie and convertible currency. The proportion of aggregate wealth in circulation during this year to that of Money is thus seen to be very nearly as fifteen to one. Granting the original premise to be true that the ratio of circulation between the wealth and Money of the country in 1861 was a just one, and the proposition is tenable that, all other things being equal, by just so much as the business of the country at the present time exceeds in amount that of the year 1861, in just that relative degree should the volume of our circulating medium be now extended. There is no complete statistical report extant at the close of the present year (1871) showing the exact

amount of the business of the country at this period. In the absence of explicit returns there is no better criterion to be governed by than the increase of our export trade since the year 1860, which is shown by statistics to be forty-nine per cent. Assuming that this represents the increase of the amount of wealth now in circulation in this country over that in the year 1861, and the present annual business transactions of the United States will amount to \$7,748,000,000. Now, to preserve the proportion between the amount of wealth in circulation to that of Money in the ratio of fifteen to one, which is allowed to have been a just one in 1861, add forty-nine per cent. to the amount of circulating medium in use at that time, and the requisite amount of Money for the present period will be ascertained. The result of the calculation will show that \$499,150,000 should be the extent of our present volume of circulating medium. In other words, if it required \$335,000,000 of circulating medium to transact business to the extent of \$5,200,000,000 in 1861, it requires, all other things being equal, \$499,150,000 to effect the proper exchanges of wealth which possesses a value of \$7,748,000,000 in 1871. But the attendant circumstances are very far from being equal in one important particular. Since the year 1861 the means for saving the use of Money have been very largely perfected and extended in the systems of deposit checks, notes, drafts, and, more important than all, the clearing-house system of our large cities. This last was in its infancy in this country in 1861, compared with its present colossal proportions. The report of the clearing-house of New York City, for instance, for the year 1869, shows that daily accounts of debit and credit between the banks of that city were settled amounting, upon an average, to the enormous sum of \$125,000,000, and that the average sum of Money used to effect these daily settlements did not exceed \$5,000,000; the balance of these accounts—namely,

\$120,000,000—being adjusted by way of offset in the exchange of checks, notes and bills of exchange which the respective banks held against each other. In the year 1861 these bank settlements were nearly all effected by actual manipulation and exchange of Money. An exact estimate cannot be made of the extent of this saving in the use of Money within the last decade, but it is a very material one, and has been placed by good authorities at twenty-five per cent.; fifteen per cent. is certainly a very small estimate of the saving which has been effected in the use of Money by these means. Allowing this to be the proper estimate, a deduction of fifteen per cent. from \$499,150,000 will give the amount of circulating medium required for the present business purposes of the United States—namely, \$424,277,500. The former amount, it will be remembered, is the sum which, by previous calculation, would represent the proper volume of our currency at the present time, were it not for this saving of fifteen per cent. which has been effected in the use of Money within the last ten years.

By a recurrence to the statement of the amount of paper Money in actual circulation in the United States in 1871, it is seen that the same amounts to \$640,605,378.08, fully fifty per cent. above the sum really needed, as shown by the foregoing calculation; and the excess, about \$217,000,000, it will be noticed, nearly equals the volume of legal-tender notes or greenbacks in actual use by the public—namely, \$250,500,000.

IV. EVILS OF THE PRESENT PAPER CIRCULATION.

The evils of our present paper circulation have their origin solely in its redundant condition. These evils, moreover, are both past and present, actual and potential. An account of those that belong to the past, by reason of their similarity to those still in existence, is not particularly per-

tinent to the scope of this treatise. They are events that indeed deserve a place, and an important one, in the annals of American literature, but the task of giving them such a record devolves more properly upon the historian. This has been partially—though not fully, and however deep the research, and however facile the pen that shall transcribe the narrative, never will be fully—accomplished. They form a part, to be sure, of the history of community in general, but they moreover form a part, and a very large one, of the history of private life, whose recesses of privation and suffering history can never fathom, whose only record is that which years of self-denying and ill-remunerated toil have written in deep and indelible lines upon the blameless foreheads of millions of careworn parents, and which undeserved want has left in the stunted forms and hapless lives of a generation of innocent and unsuspecting children. The indescribable suffering of these sad and silent witnesses, who carry in their mournful existence these tearful evidences of the evils of our present financial policy, and who are to be found in every town, village and hamlet of the republic, will never form a subject which will inspire the historian's pen or make an impress upon the gilded leaf of literature. Heaven alone has marked their anguish, and to many of them, alas! Heaven can only bring relief.

These past evils of our present redundant paper currency—and for the last five years, at least, needlessly and inexcusably so—will consequently not engage further attention, with the exception of a little general comment. The burden has fallen most heavily upon laborers, salaried men, agriculturists and the working-classes in general. The excessive issues of paper Money, which so enormously enhanced the prices of commodities, also enhanced the opportunities of the business and commercial world, but the wages, salaries and returns of the classes above mentioned have never in-

creased in anything like a relative ratio with the augmented cost of living.

One of the most obnoxious features—and obnoxious because wholly unreasonable and unprecedented—of this paper Money has been seen in the system which has been pursued in its redemption, or rather exchange, when presented in a mutilated form. The Government, after forcing a loan upon community of \$400,000,000 of legal-tender notes and fractional currency, as if not satisfied with the returns of this seemingly illegal and abortive scheme of taxation, has followed the practice of making a deduction from the amount of mutilated pieces of these issues when presented for redemption in proportion to the extent of the mutilation. That is, if a legal-tender \$5 note was presented for redemption (or rather for exchange, it could not be redeemed) with one-eighth part of it detached, other currency has only been given for it to the amount of \$4.37½, unless the holder could positively swear that the missing portion was actually destroyed, which of course has been nearly always impossible. Up to October 1, 1871, Government had taken from the people in this unwarranted manner the sum of \$250,000, and the agent of the Associated Press joyfully telegraphed the fact from Washington, adding that “This is a clear gain to the Government and a tax on circulation.” The paltry excuse for this custom has been that the detached pieces might be pasted together and form so perfect a note that the Government could not detect the fraud—that other currency would be given in exchange for such counterfeits, and thus the Government be a loser. With such Department clerks as the present system of civil service furnishes to attend to such duties of exchange, this has undoubtedly been a good and valid plea in defence of the rule. The worst feature of the whole matter has been that this loss has fallen upon the poorer classes. The business portion of community have been acquainted with the

law and avoided the amercement, while the laboring masses, ignorant of the same, became the ultimate possessors of this mutilated currency, and consequently sustained the loss. A reform was recently instituted providing that legal-tender notes and fractional currency should thereafter be received at their full value, "provided that three-fifths of the original proportion of such notes are presented in one piece. If more than one-half and less than five-eighths is presented, half the face value will be paid; less than half a note will be redeemed only on affidavit that the missing portion has been totally destroyed." This alleviates the evils resulting from the former system of redemption, but does not wholly remove them.

The laboring and salaried classes of community and our agricultural population, as they ever have been since its inauguration, still continue to be the principal sufferers from the evils of our present redundant currency. The ratio of increase in the wages and salaries of the first two has been by no means proportionate to that in the prices of all commodities which constitute the ordinary means of subsistence, and at so late a period as the close of the year 1871 this increase in the income of the salaried and laboring classes was from twenty to forty per cent. below the relative enhancement of ordinary living expenses. The agricultural population are prejudiced in their interests in precisely the same manner and in about the same degree as were the farmers in Illinois in the illustration in the preceding chapter of the evils which result from an undue extension of the volume of paper Money.

It was demonstrated in the course of that discussion that the exchangeable value of paper Money, by reason of its non-intrinsic character and consequent inability to enter the field of traffic as a commodity, is measured by the law of scarcity and excess. In other words, its value depreciates in a direct ratio with the increase that is made in the

amount in circulation, and a further logical conclusion is, as already shown, that the prices of commodities of which paper Money is the sole measure of value—and these commodities are such as are produced and find an exclusive market within the territories where paper Money is circulated—increase in a direct ratio with the decline in the value of such a medium of exchange. It was also shown in that discussion that the premium on specie, by reason that its value for the uses of a circulating medium over that of paper Money is checked to a certain extent by its market price as a commodity, never rises in a ratio proportionate to either the decline in the value of a redundant currency or the consequent advance in the prices of commodities. It also appeared in that discussion that when the bulk of any particular product finds a market in a foreign country, the price of such a product for shipment governs the price for that portion of it which is sold in the home market.

The paper Money of the United States at the close of the present year (1871), as already seen, is fully fifty per cent. above the necessary volume. Its value is consequently depreciated, and the prices of commodities of whose value it is the sole measure—namely, those which are produced and find an exclusive market in this country—are enhanced in just this ratio. The average premium on specie at the close of this year (1871), moreover, for reasons above cited, is about twelve and a half per cent. The price of all our agricultural products is influenced in a great degree by that of one of our principal staples of agriculture—namely, cotton. The great bulk of this staple, fully four-fifths of it, finds a market in European and other marts, and the price of that portion of it which is sold in our home market, as already shown, is governed by the price for shipment. This shipping price is measured by a specie standard, and the agriculturists of the country, so far as the value of their products is governed by the price of cotton—and our price

lists show that this influence is wellnigh absolute—are consequently selling the same by a measure of value twenty-five per cent. less than that which affixes the price to articles produced and sold exclusively in this country, and which they are constantly purchasing as means of daily subsistence. That is, with specie at a premium of twelve and a half per cent., and our paper Money depreciated fifty per cent., and home products sold exclusively here consequently enhanced in value to that extent, our agriculturists sell an article of a given value for one dollar in specie, or one dollar and twelve and a half cents in currency, and pay one dollar and fifty cents in currency for articles of subsistence of a given value, which cost their owner no more than did the farmer's produce, which realizes him but one dollar and twelve and a half cents. The present redundant currency thus robs our agricultural population of twenty-five per cent. of their annual produce. This theoretical reasoning is abundantly sustained by facts. In the autumn of 1871 flour was quoted upon our wholesale price-lists from twenty-two to twenty-eight per cent. below the ruling rate in 1860, and pork about thirty per cent. below its market value prior to the opening of hostilities.

These evils of our redundant currency will not be further considered, and attention is drawn from the topic to that which will embrace the concluding remarks of this chapter—namely :

V.—RESUMPTION OF SPECIE PAYMENTS.

Of all the duties which ever devolve upon a government for execution there is none more delicate in character, far-reaching in its bearings and important in results than the one effecting a transition from an era of paper Money to the establishment or re-establishment of specie payments. It is an end which can never be attained, however great the wisdom which directs the means for its accomplishment, without causing dissatisfaction, and eliciting censure from

some portion or portions of the community, for on some it is sure to operate with disadvantage. Gold and silver constitute the only normal and legal instruments of commerce for measuring the value and effecting exchanges of commodities, and when once compelled by violent convulsions of State to abdicate the throne to which the wisdom of the ancients elected them, are not easily enticed to reassume the sceptre which has been unwarrantably filched from their control.

The generic term which covers all means of resumption is contraction. This contraction, or resumption, as pleasure or caprice may term it, may be effected in one of two ways, and one of these is immediate, the other mediate, in the attainment of the result. The first is to call in the paper Money and give the holder specie in exchange; the second is to fund such paper Money in Government securities which, both principal and interest, are ultimately payable in coin. The first difficulty in the way of effecting resumption by the method first above named is the want of the necessary specie to cancel the excessive volume of paper Money in which its adoption is always sure to terminate. Accumulation for this purpose is a slow process, and seldom if ever resorted to. The history of nations resuming specie payments after protracted eras of paper Money almost invariably shows that other methods have been pursued. England, for instance, in the year 1819, specie payments having been suspended since 1797, adopted a scheme of resumption, in pursuance of an act of Parliament, which required the Bank of England to immediately commence the redemption of its notes in coin, but allowing this to be consummated by slowly-advancing stages. The bank was required to commence redemption by paying specie for its notes only a little in advance of their rated value as determined by the premium on gold, and to slightly increase this amount at frequent intervals. That is, if the notes of

the Bank of England were worth ninety cents to the dollar, the scheme was to begin redemption of the same by first paying, say, ninety-three cents to the dollar in specie for all that were presented, and increase the valuation at stated intervals. The project, as all readers of English history are aware, was a success. The changes were so slight and of so frequent occurrence that very little disturbance resulted to the commerce of Great Britain, and the final period of full resumption was anticipated by the bank, and its notes reached a par valuation with specie some time before the date suggested by the act of Parliament.

This plan has been recommended by high authority for the adoption of our Government as a means of returning to specie payments; and with nearly one hundred millions of coin constantly hoarded in the National Treasury, and our paper Money at a valuation of about eighty-five cents to the dollar, no earthly reason can be presented, neither would any arise, barring war, why, under such a course, the United States should not effect a full resumption at any time, within, at farthest, two years after the inauguration of such a system.

The second plan of resumption by funding our paper Money, or rather the excess of it, in an interest-bearing bond, principal and interest payable in coin, is equally feasible, and free from obstacles which would militate against its reaching a successful issue. The entire amount of legal-tender notes—namely, \$357,500,000—might be gradually withdrawn in this manner without any prejudice to commercial interests. This statement may at first glance seem unwarranted, when the fact is remembered that, by our calculation a few pages back, \$217,000,000 nearly represent the excess of our present circulating medium. It must also, however, be remembered that \$107,000,000 of this issue of legal-tenders are held as a reserve by the National banks, thus leaving only \$250,500,000 in actual

use as a medium of exchange. As the notes now held by the National banks would simply be exchanged, under such a funding process, for an equal amount of the bonds into which the whole issue would be funded, \$33,500,000 would represent the gross sum by which our currency would, in this manner, appear to be unduly contracted. This apparent void of \$33,500,000 would, however, be speedily filled with specie, which such contraction, by means of its placing our currency at a par valuation with gold and silver, would force from the amount that is now hoarded throughout the country.

Large holders of merchandise, obligors on deferred contracts and obligations, and the entire portion of the debtor class of community, would suffer comparative loss by such resumption; but nearly seven years have elapsed since the exigencies which induced this era of paper Money have ceased to exist, and no valid reason can be offered by the parties above named why they have not ere this set their houses in order and prepared for the change.

It is respectfully submitted, in this connection, that the plan of resumption presented by Senator Sumner to the United States Senate in the winter of 1871 and 1872 is unsound in theory and would prove mischievous in practice. Mr. Sumner proposes to effect resumption by issuing "every month ten millions of interest-bearing legal-tender notes, similar to those that were issued in 1863 and 1864, and to cancel a like amount of greenbacks, the process to go on till all the greenbacks have been thus replaced. The new notes, he proposes, shall bear five per cent. interest, and shall be paid in coin at the end of three years, or converted into five per cent. bonds, at the option of the Government."

The mischief of such a scheme of resumption as this is found in the fact that these "interest-bearing legal-tender notes, similar to those that were issued in 1863 and 1864,"

would serve the double purpose of capital and Money. They would almost invariably, in the first instance, be taken for purposes of investment, like any other Government security, but with the intention of using them, as occasion might require, for legitimate business pursuits or speculative purposes, as a regular medium of exchange. While held as an investment our circulating medium would be contracted, but when put in circulation as Money the volume of our currency would be again extended, and during the entire period of three years allotted for their maturity there would be a constant alternation between these two extremes. These constant changes in the amount of our circulating medium would produce corresponding vacillations in the relative value of our paper Money and specie, similar and frequent variations in the value of all commodities, and a consequent ceaseless disturbance of our entire commercial interests. This method of resumption would destroy the first fundamental element of a healthy circulating medium—namely, stability—envelop the returns of labor, business and capital with uncertainty, and create inevitable stagnation and distrust in every scheme of private enterprise whatsoever.

For proof of these assertions reference may be had to our experience with the notes of 1863 and 1864, which Mr. Sumner proposes to pattern after in his plan of resumption.

The first issue of these notes was made in the winter of 1862 and 1863, amounting to a little over \$100,000,000. They were used in precisely the same manner as we have already indicated—at one time as Money and another as capital—with precisely the same results. Prices of commodities rose and fell during the next six months in an alternate ratio of from thirty to forty per cent. Toward the close of the year 1864, as stated in the early part of this discussion, over \$200,000,000 of these notes were in circulation, and the reports of the Money market during the early part of this

year show that the price of gold, within periods of no more than twelve days, ranged from \$2.20 to \$2.75. These changes in the value of commodities and specie resulted solely from the disturbance in the volume of the circulating medium, caused by this alternate ingress and egress of these compound-interest notes. They were, in short, one of the most pernicious species of paper Money issued during the war.

It might seem mere temerity to question the soundness of a plan of resumption emanating from such a source as Senator Sumner, were it not for the existence of these indisputable facts. Have we any reason to suppose that this same history will not repeat itself if a corresponding condition of things is inaugurated?

The proper disposition of the legal-tender notes seems to be a conversion of them into some sort of security, which shall be only a means of investment, which shall be merely capital—a security which shall not possess the dual and mischievous function of both capital and Money.

The country is not only, at the present time, ready for such resumption, but the interests of the community at large, and particularly of our laboring, salaried and agricultural classes, who have so long submitted to this gross injustice, demand that further postponement of a full resumption of specie payments shall not be allowed—that at least the legal-tenders in actual circulation outside of the amount held as a reserve fund by the National banks shall be retired, and thus palliate, if not entirely remove, the evils which are greater than those resulting from all other features of our present governmental policy, save that of our civil service—namely, those of our redundant paper currency.

•

CHAPTER III.

BANKS AND THE NATIONAL BANKING SYSTEM.

THE theory and uses of Money in the abstract, together with the present status and relations of the circulating medium of this country, constituted the sole subjects of investigation of the preceding chapters. The present one will be devoted to a consideration of the agencies which in a great measure effect the proper distribution of Money—namely, Banks—and a discussion of the National Banking System of the United States. For this purpose the present chapter will be divided into two divisions. The first will treat of Banks and Banking Business in General; the second of The National Banking System.

DIVISION FIRST.

BANKS AND BANKING BUSINESS IN GENERAL.

A Necessary Adjunct of Money for Purposes of Commerce—Their Legitimate Office to Receive and Distribute Money—Present Offices—Deposit—Discount and Circulation—Deposit Masses Capital—A Means for Saving the Use of Money—Is Deposit a Myth?—Deposits Seldom Moved—Deposit is not Money, but its Substitute—Discount, the Purchase of Unmatured Obligations—The Fund by which the Business of Discount is Worked—How Discount Operates in Connection with Deposit—Circulation, how it Differs in Nature from Deposit and Discount—A Measure of Public instead of Private Economics—An Act of Credit—The Elements of the Credit requisite for Circulation—Circulation belongs to and devolves upon the People—The Doctrine of Convertibility—Is it Tenable or Feasible?—Private Banking—Banking in History—The Banks of Venice, Genoa and Amsterdam—Their Origin and Operations.

In a prior connection we had occasion to lay down the law which God has attached to all conditions of human existence—a law which indeed places mankind but

one remove from Omnipotence—namely : That man to live must advance—that life is progress, that repose is death. In tracing the causes and origin of Money we incidentally cited the invention of this commercial agent as one of the grandest proofs and illustrations of this truth which history has ever afforded. Not only another proof of the existence of the law, but also another forcible illustration of its constant application, is seen in the device of those peculiar institutions of finance which mankind has designated by a title indicative of both their office and character—the impressive, solid name of Bank. Banking institutions are indeed milestones in the progress of civilization—indispensable adjuncts of even the most primeval commerce. The law of human progress which seized upon man in his primal pursuit of the chase, transformed him into a nomad, and then, leading him through the intervening stage of a predial existence, opened to him the portals of commerce, and bade him in its pursuit reclaim the uttermost parts of the earth to civilization, also brought to his assistance in this momentous task the agency of metallic Money. The earlier behests of commerce are to a certain extent adequately served by this single agent of exchange, without the establishment of any especial means for its oversight and proper distribution ; but as civilization advances the necessity of such an adjunct to commerce soon becomes apparent. Money as an agent of exchange and producer of wealth is not only both scattered in small quantities among many holders and condensed in large sums in the hands of successful capitalists, but in both cases remains idle and useless, although demand for its service in the field of productive industry is constant and worthy of satisfaction. Here, then, are two reciprocal wants. Money seeks employment, and industry awaits capital. But the small sums in the hands of the many holders require concretion, so to speak—wait to be massed, banked—before they can

offer, and the accumulation of the capitalist demands security before it will give, assistance to industrial needs. An agency which can give such security is necessary to gather up these metallic idlers from their loafing-ground and assign them to duty in the attenuated ranks of commerce. How is this to be effected? History answers, By association—by massing—in short, by banking. The possession of wealth, as already seen, gives power and credit. An application of this truth is made by a joinder of these idle sums of Money in large amounts, by an association of these capitalists, who offer to collect the unemployed Money of community and assign it to safe and remunerative labor; and as security for the faithful performance of their trust pledge their accumulated and associated wealth. This is the birth of banking. Let us follow it to a mature life.

From the foregoing remarks it has doubtless become apparent that the offices of legitimate banking are to receive and distribute Money. The receipt of Money by banking institutions is evidenced by a certificate to that effect—the distribution of it by taking a written promise of the distributee to repay the same with interest. These two functions are properly designated deposit and discount. They will be discussed at length hereafter; in this connection they are only referred to incidentally. In the performance of this dual function banks act as equalizers of the supply and demand for Money. They constitute an interceding agent, so to speak, between capital and its borrowers, dispelling the doubt and insuring the safety of the former on the one hand, responding to the wants and necessities of the latter on the other, and thus keep the otherwise idle hoards in constant circulation in the unremitting service of productive industry. They are, in short, the fiscal agents of the mercantile world.

The efficiency of banks in the service of commerce by the mere collection and distribution of metallic Money

would be very inadequate and unsatisfactory. Whenever commercial pursuits assume proportions of the slightest magnitude they demand very frequent exchanges of the tokens which effect the purposes of sale. To consummate every transaction of the business world by an actual manipulation and transfer of metallic Money would be wholly impracticable—yes, more, entirely impossible—unless commercial pursuits were restricted to the narrow limits of what could only be termed, so to speak, a refined barbarism. The use of metallic Money as a sole circulating medium is, in fact, a conclusive badge of barbarism and ignorance. It is a denial of that faith in man for man without which neither commerce nor civilization can emerge from the swaddling-clothes of a society which makes the needs of physical subsistence the ultimate measure and limit of traffic. It, in short, ignores credit. This inefficiency of incipient banking leads to the adoption of a system whereby these fiscal agents of the commercial world hold metallic Money as a pledge of their solvency, and issue their promises to pay Money on demand as a substitute for its circulation. The theory and basis of this custom is credit, and banking is thus traced to the assumption of a third function—namely, circulation. The further line of discussion of this subject will be devoted to a separate consideration of these three present offices of banking, in the following order: I. Deposit; II. Discount; and III. Circulation.

I. DEPOSIT.

Deposit consists, as already seen, in gathering together—massing—banking—the unemployed capital of the country for proper distribution through the various avenues of productive industry. Deposit, in the abstract, moreover assumes two forms. The idle capital of community may be massed or banked together either by an actual placing of metallic Money in the custody of banking institutions, or

by giving them the care and keeping of the various certificates of indebtedness, bills of exchange, promissory notes and convertible or inconvertible currency which circulate as substitutes for specie. By far the greater portion of deposits are of this latter character. Community at large, so far as its needs of a medium of exchange are concerned, may be divided into two classes—the mercantile or commercial, and the consuming class. These two classes, moreover, comparatively speaking, make use of two distinct species of circulating medium. The latter, in supplying their daily and petty wants of physical subsistence, use the circulating equivalents of specie or a substituted currency, but the former, in effecting the transposition of the aggregate products of productive industry—in supplying commerce with motive-power—resort to the circulation of the various evidences of indebtedness above named. Many individuals, it is true, may and do belong to both of these classes of community, but in each respective position they make use of these respective means of a circulating medium. As already indicated, the wheels of business would be blocked and commerce confined to its natal cradle if actual exchanges of Money or currency concluded every business transaction; and, as already noticed, moreover, the disenthralment of community from such a rude species of commerce is one of the boundary-lines between civilization and barbarism. The business world buy and sell sometimes “on time” and again “for cash,” as occasion and circumstances may require; and in both instances not a dollar of Money or substituted currency is frequently employed in the transaction. In case of “time” transactions the same are concluded, either in the first instance by a promissory note, which, after often traversing almost countless avenues of the business world, knocks at the bank door of the maker at maturity for payment, and is canceled by a mere transfer of deposit, or they remain open till the

stated time for payment is at hand, when the bank check or draft, by another mere transfer of deposit, completes the contract of purchase and sale. This is credit—faith between man and man in their ability to execute their contracts, and belief that this ability is supplemented by honest intent. From the foregoing propositions it appears that deposit dispenses with the use of Money. This is, indeed, one of the principal offices of deposit, and will now receive consideration.

The proposition that deposit constitutes a means for saving the use of Money should be also coupled with the statement—which is, in fact, a logical deduction from such proposition—that deposit is not itself Money, but a mere substitute for such a medium of exchange. A demonstration of this deductive assertion will afford sufficient proof of the major proposition. Let the course of dealing among merchants be again taken as an illustration. A buys of B \$1000 worth of goods, to be paid for at the expiration of three months. The contract is concluded upon delivery of the goods, by A giving B a promissory note for the amount, the maturity of which is fixed at the date above mentioned. B will place this note with his banker by way of discount (to be examined hereafter), and the amount of the proceeds will be placed to the credit of B on the books of the bank as a deposit. This deposit is not Money; it is merely the promise of A to pay money. Neither does the bank pass any money to B in the process of discount; it merely makes an entry on its books giving B the right to draw checks upon the bank for the sum; and when B draws his check or checks for such sum, in three cases out of five no Money will be passed from hand to hand in the process of payment, but the same be effected by a mere transfer of the deposit—of the right to draw—on the books of the bank from B to the party in whose favor the check runs. In this way the proceeds of the

\$1000 note of A will be drawn against—the deposit will be transferred—scores of times before the matured obligation calls at the bank of A for redemption. Its avails will in the interim have served the purposes of perhaps a hundred transactions. The same is true of sales for cash, except that the number of transfers will not usually be so many, on account of the fact that the check given for payment of a cash purchase is payable on demand, and will consequently usually reach the bank of the drawer sooner than an obligation the maturity of which is deferred. The truth of the foregoing is also substantiated by a recurrence to the discussion in the first chapter of this treatise, where the proposition was maintained that the amount of Money needed for commercial purposes was based upon the relative rapidity with which Money and commodities circulate. The same principle precisely is here involved, the only difference being that we are here speaking of commercial substitutes for Money, instead of Money itself as the exchanging agent.

In the absence of further investigation, the questions naturally arise in this connection, Is the system of deposit entirely a myth? does it assume to mass—to bank—Money, when in fact it only grasps the shadow? is the whole scheme a visionary one, a constant make-shift, a stupendous fraud? By no means. Its basis is credit. It will be remembered that in a prior part of this treatise we laid down and elucidated the proposition that the possession of wealth always gives to the holder a purchasing power far greater than is warranted by the actual amount of his immediate possessions. His capital consists, in other words, of the combined amount of his wealth and this credit power which springs from its ownership. It is the operation of this power of credit in three forms which explains the law and system of deposit; and as this credit power manifests itself in three distinct and separate, yet confluent,

channels, so has it three distinct and separate yet associated bases. The working basis of the depositor, whereby he places his drafts, checks, notes and evidences of indebtedness with his bank, and by the means of discount (to be hereafter explained) obtains a right to draw on the bank for their proceeds, is the amount of his actual and credit capital. The basis of the bank, whereby it insures to the depositor the safety of his deposits until he shall draw his check against the same, is the actual amount of banking capital and extent of banking credit; and the common basis of the business of both the bank and individual, with the qualification below named, is the amount of circulating medium of the country. The bank will not discount beyond what it considers the depositor can protect by means of his actual capital and credit power; the depositor will not entrust the bank with his securities to a greater extent than he believes the bank, by means of its capital and credit power, can insure; and the amount of the combined business of the depositor and the banker is measured by the amount of actual or substituted circulating medium, with a due regard to the relative rapidity with which Money (or its substitutes) and commodities circulate. These bases are all separate and distinct, and yet conjoint, for, both separate and joint, they are measured by the aggregate amount of the capital of the country.

It has incidentally appeared in this discussion that deposits are rarely moved in payment of the checks or bills that are drawn against them. This is perfectly apparent if we make, for illustration, the hypothesis that there is but one bank in the city of New York, thus compelling the entire business community of that city to transact their banking business at this single institution. Under this condition of things it is at once seen that all checks drawn for payment of city debts upon this single banking institution would require no actual transfer of the deposit unless the

payee of the check was not a depositor of the bank; at least, as between all depositors, no such transfer would be required. A would draw his check for \$1000 in favor of B, and A's account at the bank would be debited and B's credited with this sum. A transfer of a deposit would only occur when the payee was not a depositor. This principle, with the single qualification where the payee of a check is not a depositor at any bank, applies, with but a very little limitation, however great may be the number of these institutions. A draws his check in favor of B for \$1000 on the Union Bank of New York. B is a depositor at the Traders' Bank of the same city. Instead of presenting A's check at the Union Bank and demanding the money therefor, B will deposit it in the Traders' Bank, and when this institution demands payment of the same from the Union Bank, in nine cases out of ten the latter will also have a check on the former which it has taken on deposit from a customer, and only the difference between the two checks requires payment; and for this, in the greater number of instances, the debtor bank will give a check in settlement, so that the greater portion of the checks and bills drawn against deposits are paid by mere entries on the books of the bank. This is illustrated by the report of the New York Clearing-House for 1869, heretofore cited, where it is seen that the aggregate amount of daily settlements between the banks of New York for that year amounted to \$125,000,000, and that \$120,000,000 of these settlements were daily made by this means of offset, leaving only \$5,000,000 to be actually passed from hand to hand.

In conclusion, then, deposit is not Money, but a substitute for it. The same is rarely ever transferred in payment of checks and bills drawn against it, but such payment is made by mere entries upon the books of the bank. The office of deposit is to gather together the loose, idle capital of the country—to mass, bank it, and assign it to remuneration.

rative labor in the field of productive industry, and in so doing to increase, by the operation of the credit power, heretofore explained, the extent of its working capacity. In the performance of this compound office deposit husbands circulation, and so economises the use of Money.

II. DISCOUNT.

The principles upon which discount rests are so intimately interwoven with, and so analogous to, those which form the basis of deposit that this topic will not, by itself, receive an extended discussion. Deposit and discount go hand in hand. Through the agency of the first, banking institutions marshal the straggling hoards of capital into an unbroken line, and by means of the second employ this moneyed force in the execution of the work which constitutes the sole legitimate source of banking profit. The former is a preparatory, the latter a terminative task. The one is a receptive, the other a creative agent. Discount is the purchase of unmatured obligations. The sum paid represents their present worth, and this is measured by the amount stamped upon the face of such obligations, less the legal or agreed interest for the time intervening between purchase and maturity. This interest, which springs into existence from the process of discount, as already indicated, is the sole remuneration for legitimate banking labor. The fund with which the business of discount is worked depends upon the character of the law under which banking institutions are organized. If the banking business of a country is controlled by the General Government, the legitimate fund which keeps the wheels of discount in motion is confined, for the most part, to the bank deposits. The entire or greater portion of the movable capital of banking institutions organized in this manner is almost invariably in the possession of Government as a protection against loss which may result from its guarantee of the circulation. This, in

a partial manner, is the case under our present National banking system, as will hereafter appear. If the banking business of a country, however, is not controlled by the General Government, the discount fund is usually measured by the aggregate amount of capital and deposits, for in this case the banks usually issue and control their own circulation, and hence hold their entire capital, while in the former instance, as already seen, this state of things does not exist. In both cases the reserve fund held by banks for the conversion of circulation is sometimes trenched upon, perhaps frequently, to increase the discount fund. This, however, is not only illegal, but absolutely fraudulent.

From the foregoing remarks in reference to the fund with which the business of discount is worked, the inference must not be drawn that invariably, where banking is a monopoly, this fund consists solely of deposits, and where it is free, of both deposits and capital. This does not follow as a necessary deduction from the preceding paragraph. The banking business of the United States at the present time is a monopoly for two reasons: first, because, in the abstract, it is under control of Federal authority; and second, because the amount of circulation is limited. Yet the business might still be retained under Federal control, with no limit set upon the amount of circulation, and it would then be, in one sense, free, and in another a monopoly. Still, although in one sense free, the Government would hold the banking capital to the same extent as now, as it would still be responsible for the redemption of the circulation, and the discount fund would thus continue to be measured by the amount of deposits. Again, the banking business of London is a monopoly, but, unlike our own, a monopoly in the hands of a single institution instead of the Government, and the Bank of England, although a monopoly, both holds its own capital and issues its own circulation, whereby the fund which can be drawn upon for

discount is made up of the combined sum of capital and deposits.

As deposits are merely temporary, simply placed in bank subject to the call, check or draft of the depositor, it may seem inexplicable how a banking institution can discount from this fund with safety. In other words, if the deposits are liable to be drawn out at any moment, *in toto*, what real basis is there upon which to work the business of discount? It is found in the fact that, although the gross amount of deposits are liable to be drawn out, it is in no way probable that such an event will happen, and experience proves that an average amount will always remain uncalled for, barring war or financial disaster. The moneyed wants and resources of the community are constantly changing, and although one class of depositors may keep a very active account and draw very close upon their balance, another class, with greater means and less extended necessities, will keep a constant deposit of about a given sum. This average amount of deposit constitutes the discount fund, and is almost exactly appreciable by any institution of established business. The amount of deposits in the New York City banks has amounted for the last two years, upon an average, to about \$200,000,000, and this average has not varied more than five per cent. during that period. An incidental statement may be made in this connection, that the aggregate amount of deposits in the United States at the close of the present year (1871) is about \$600,000,000. From the foregoing remarks, which have shown the nature and extent of a discount fund, it is perfectly evident, without discussion, that it is no part of a legitimate discount business to furnish community with permanent capital for business purposes. In other words, it is not the office of discount to make loans upon long time—to purchase obligations whose maturity is long deferred. This is the business of savings banks and similar institutions, not here under discussion.

III. CIRCULATION.

It has been incidentally, if not directly, asserted in this discussion that the issue of circulation constitutes no part of the business of legitimate banking. As has been seen in the preceding chapters of this treatise, the character and management of a circulating medium are fraught with results, either for good or evil, incomparable to any save those which spring from the fundamental organism of government. Deposit and discount are mere agents for gathering and distributing capital. Their office is simply a ministerial one, and the duties of the same are simple and well defined. Their conduct can militate but very slightly against the interests of community, unless characterized by inexcusable ignorance or actual fraud. They act in a mere executive capacity, and, looking at them as abstract entities, they are enveloped with no mystery and are unclouded with any of the occult surroundings of science or art. They are plain in theory, simple in practice, and bear upon the well-being of either commerce or individuals only in the most restricted manner as to either time, person or place. They are indispensable adjuncts of business pursuits, it is true, but their existence, instead of being independent, is entirely dependent, and presupposes that of a healthy commerce, which is in turn an exponent of a well-organized and effective circulating medium. Deposit and discount, in short, are mere conventional, and in no sense political, institutions. They exist, as it were, by contract—simple errand-boys in the employment of circulation.

The issue of credit Money, however—of circulation—is an office of entirely different import. It is essentially a measure of public economics. There is not an interest of community or the individual which is not dependent upon the proper discharge of this office for maintenance and success. All-powerful as is the exercise of this function for

either good or evil upon commercial pursuits, embracing as it does not merely restricted portions of community or classes of men in its operation, creating as it does a medium of exchange the sole constituent essence of which is credit—and a symbol of credit, moreover, which is to command the respect and confidence of the entire public—the issue of circulation is purely and peculiarly an act of a political character, and, for reasons foreshadowed in this, and stated in full in the succeeding paragraph, one which properly devolves upon the people at large, upon the supreme power, upon the General Government.

The single fact that the issue of circulation is an act of credit develops sufficient reason for the assignment of this office to one general, responsible head. This circulation—this credit Money—seeking, ay more, demanding, as it does, the confidence and adoption of the entire community, should consequently possess all the elements of the most approved credit known to commercial usage. One of the most important of these elements is, that the accredited party should be well known throughout the entire territory wherein its promises circulate as a medium of exchange. The identity of such a source of issue, indeed, should be so notorious (using the word in its non-prejudicial sense) as to be within the knowledge of the humblest peasant or most menial artisan. Coupled with or attached to this notoriety should be found, as other elements of credit, the characteristics of favor, reliability and strength. Its good name, in fact, should be a synonym of virtue, its integrity a perfect exponent of truth, and its stability a paragon of human endurance. These elements of credit must necessarily attach to every agency which invites universal faith in the purity and sacredness of its public acts. Such an agency is circulation, and the public presupposes, in its existence, that of the various characteristics above mentioned.

Another important element of credit for a medium of exchange—for circulation—is, that the issuing source should be sole, single and undivided. This is the argument of uniformity. Neither the commercial nor consuming world, in their all-absorbing work—the one of maintaining solvency and the other of securing means of subsistence—wish to be hampered with the task of discriminating between the current value of competing bills of credit. Such discrimination, so far as accuracy is concerned, is, in fact, impossible in countries which have a wide extent of territory, and the most acute observer will often find his judgment thwarted and purse depleted when obliged to make use of diverse forms of a circulating medium. This thought will find a more extended expression in our commendation and criticism of the National Banking System. These arguments of identity and responsibility on the one hand and uniformity on the other are supported by many historical illustrations. The circulation of London and vicinity, for instance, although it does not emanate direct from Government, is issued by one colossal institution, the creature of Government, and one which is nearly as old, and certainly as stable, as the English Government itself. It presents the combined advantages of strength and uniformity. So also with the ancient Banks of Amsterdam, Genoa and Venice. These institutions will all receive a more extended notice hereafter. The disadvantages of a diverse system of circulation, moreover, are instanced by our old State banking institutions. The evils of that system in these respects require no explanation or comment. They are within the knowledge of the entire community. They will, however, receive a little additional notice in the second division of this chapter.

These are some of the reasons why the issue of circulation devolves upon the people at large, upon the supreme power, upon the General Government. It not only de-

volves upon this power as a peculiar, political duty—it belongs to it as a species of property. The fundamental idea of circulation is that it shall promote the public convenience. It is a substitute for metallic Money, and is designed to redound to the good of the entire community, equally and indivisible. Community, moreover, is compelled to give it respect and confidence, to place credit in its representative value. As a substitute of metallic Money for universal convenience, as an evidence of credit which the entire population is forced to respect, the issue of circulation and the profits which accrue therefrom belong to the people at large, to the General Government. In other words, the issue of circulation should cost the people of any country no more than the bare expense of the labor and material which compose it and its necessary supervision.

In the foregoing remarks as to the proper source of issue of circulation the principal requisites of the same have incidentally appeared. A little additional comment upon this point will, however, now be made. The necessity of convertibility in respect to circulation will first engage attention. Convertibility as a requisite for circulation presents itself in two aspects—one initiate, the other consummate. The latter is consistent in both theory and practice, and denotes solvency, while the former is under all systems almost all theory, so to speak, and practically true only to a certain extent. The latter, *per se*, is an absolute necessity; the former only that it shall be a true representative of the existence of the latter. In other words, solvency must always be assured—convertibility only to the extent of denoting solvency. The history of the entire banking business of the world, literally speaking, contains no record of absolute convertibility in the first instance. Convertibility in the abstract signifies a specie dollar in the hands of the source of issue for every paper one in circulation,

and yet, as already stated, such a condition of things has never existed. The largest specie reserve ever held by banking institutions for the conversion of their circulation has rarely, if ever, exceeded thirty per cent. of the same. There has never been a day in the whole history of circulation when specie payments could have been maintained if conversion of the entire note issue in gold and silver had been demanded, and hence it is that in all seasons of financial disaster specie payments are almost immediately suspended. Convertibility, then, practically speaking, merely denotes solvency, and the question is pertinent in this connection, With solvency assured, is convertibility a necessity to any extent?

This question pushes our general inquiry into an examination of the bases of circulation. These are two in number, moral and material, namely—credit and capital. The first was referred to at length in the chapter upon Money and Currency, and has received frequent and unavoidable mention in our subsequent discussion, for it is the nether millstone, so to speak, of the whole science and art of banking. The last is a necessary adjunct of the first—the substance—the pledge—which circulation asserts is in the possession of the issuing agency. This material basis of banking, capital, always exceeds the amount of circulation, and is consequently adequate security for the redemption of the same if properly guarded. Payment of deposits, moreover, is assured by collaterals held as security for loans. What need, then, of primal convertibility? The question may not be free from intricacy, but looking at the matter from this standpoint, convertibility in the initiate, in the first instance, unless it can be absolutely adequate to absorb the entire issue, seems to be, in most cases at least, of little comparative importance. The conclusion of the whole matter of convertibility may be summed up by saying that it never has existed, only to the extent of adding about

twenty-five per cent. to the capital which ultimately assures redemption—that, practically speaking, it is a myth, and with capital in excess of circulation, deposited with outside agencies in trust for the redemption of the same, it is absolutely and entirely unnecessary.

The perfect absurdity of all the convertibility that has ever existed is made more apparent by the fact that deposits, in addition to circulation, are by force of law, as well as banking usage, payable in specie or other lawful money. On the supposition that specie payments exist in this country at the present time, let us see what a mockery convertibility would be in this instance. The circulation of the country is \$325,000,000, the amount of deposits \$600,000,000, making a total of \$925,000,000. The reserve for the payment and conversion of this aggregate amount of deposit and circulation, under our present banking system, would be, by average, twenty per cent. of \$925,000,000—namely, \$185,000,000. How far this would operate to convert and pay \$925,000,000 of circulation and deposit requires no additional statement. The banking capital would be the ultimate resort in both instances.

It has been maintained, in this discussion of the subject of circulation, that the issue of the same constitutes no portion of the business of legitimate banking. Before dismissing this topic a slight allusion will be made to the system of private banking as an illustration of the truth of this theory. The business of private banking, which consists of receiving money on deposit and discounting commercial paper, has been conducted in England for a long period. It is mostly confined to the city of London and vicinity, and owes its origin to the fact that the Bank of England, by virtue of a special act of Parliament, holds a monopoly of the issue of circulation within the city limits and sixty-five miles of the surrounding country. These English bankers have conducted their business under the

two forms of individual and associated management. The first form is simply that of an ordinary firm or copartnership, and embraces the larger London capitalists. The second is the well-known principle of association, by which, under a general act of Parliament, individuals put their separate capital into a common, aggregate fund, and incorporate themselves into joint-stock companies for the purposes of private banking. The difference between the two species of management is that which constitutes the distinctive feature—the very germ and essence indeed—of the widely-extended and much-abused principle of association. Under the individual form of a firm or copartnership the liability of the members for losses which may result to the community from their neglect, ignorance, fraud or mismanagement is unlimited, and attaches, not only to the joint fund of the copartnership, but also to all the separate property of each individual member; while under the associated form of a joint-stock company the liability of the members is fixed, and is measured either by the amount of corporate property or by this joint fund, together with the separate property of each individual member in a sum equal to the value of his stock. The business of private banking in London under this associated form of management has assumed proportions of tremendous importance. The amount of private deposits of these joint stock companies has, at many times within the last ten years, and we think continually, largely exceeded those of the Bank of England, and though they have never issued a dollar of circulation, their business has yielded a profit of from five to fifteen, and even twenty per cent.

Private banking in the United States, comparatively speaking, is still in its infancy. In New York, Philadelphia, Boston and some other of our larger cities it has been greatly extended since 1860, and a few firms have achieved both an American and European reputation second to none

of our regular banking organizations. The business in this country, however, is for the most part at least, and we think entirely, conducted under the individual form of management—by firms and copartnerships. The legislatures of most of our States have enacted general laws under which individuals may incorporate themselves into joint-stock associations, with limited liability, for the prosecution of nearly every kind of industrial pursuits; but we think no general State statute exists whereby individuals may organize in this manner for private banking. This is certainly true of New York and our principal commercial States, and unless some means can be devised to correct and prevent the abuses of association which exist in this country, it is to be hoped no such statute will ever be created. The present is no place to descant upon such abuses of this corporate system, but our business annals are actually disgraced with such proceedings. Under covert of this privilege of association, whereby individual is merged into corporate existence, and personal responsibility shielded by an aggregate, limited liability, our business community commit acts, assume positions and promulgate statements which in their separate, individual capacity they would not presume to adopt, except with the expectation of seeing their financial credit, and reputation for common honesty, even, sink into immediate and irretrievable ruin.

The private bankers of this country do not, of course, issue circulation, yet the business is a prosperous and remunerative one, and yields about the same returns as the business of institutions which are organized under our National banking system. The profit derived from the issue of circulation under the reserve system of banking—under the system of partial convertibility, so to speak, already described—is of very little value, unless it may be to country banks. The profits of our city banks are almost

entirely derived from loans of deposits. The deposits in the banks of New York City, for instance, amount to \$200,000,000, yet their aggregate circulation is only \$34,000,000, and the expense of its management nearly equals the amount of accruing profits. So far as our country banks are concerned, their past history shows such a gross violation of the trust of circulation that the interests of community would be furthered in every respect if they were placed under a permanent proscription.

The examination of the present offices of banking, as announced in the outset of this discussion—namely, deposit, discount and circulation—is here concluded. Comment upon the subjects of free banking and banking as a monopoly would find a logical place in this connection, but as the same would require repetition, to a considerable extent, in the second division of this chapter, it is deferred until the National Banking System shall form the topic of investigation.

The subject of Banks and Banking Business in General will cease to engage attention with the briefest possible allusion to some of the older institutions of this character which have played an important part in the commerce and civilization of the world. Reference is had to the Banks of Venice, Genoa and Amsterdam, which were established, the first two in the twelfth century, and the last in the year 1609. The Bank of Amsterdam was by far the most important of these institutions. The causes which led to its creation were precisely the same as those which induced the formation of its predecessors, and the organization of the three was similar in every important particular. The origin and management of the Bank of Amsterdam will consequently only be explained.

The measure of value of Amsterdam and of Europe during the seventeenth century consisted of gold and silver. The commerce of Amsterdam at this period outstripped

that of any other European city or state. She was, in fact, the storehouse of the world. As her territory was very limited, the amount of her current coinage was consequently small. Her immense traffic, moreover, placed her in daily intercourse with the whole of Continental Europe and the English isles. Great Britain and the East depended upon her, in a great measure, for their stores, and in turn filled her coffers with their metallic treasure. In consequence of her small coinage and this enormous influx of the Money of other countries, her currency was made up almost entirely of foreign coin and of a very diversified character. It unavoidably consisted, moreover, to a greater or less extent, of coin the value of which was more or less diminished by clipping and abrasion, for the coinage of some of the countries upon her extended list of customers would, as a matter of course, be old and require reformation. This heterogeneous currency of Amsterdam militated against the interests of her merchants in the way of exchange. Holders of bills drawn against these merchants would not accept this clipped and worn currency except at a discount, which, owing to its diversified as well as deteriorated character, was by no means inconsiderable.

To remedy these evils the Bank of Amsterdam was established. It was a mere bank of deposit, under the guarantee of the city, for the purpose, in the first instance, so to speak, of recoinage the clipped and worn coin of which the currency of Amsterdam was composed. It received this coin on deposit, allowing a sum for it equal to the real intrinsic value of the same, less the expense of recoinage and management, with which sum the depositor was credited on the books of the bank, and given a written "credit"—receipt—therefor. These deposits, assuming as they did by recoinage an enhanced value over the mixed currency in circulation, were known by the name of Bank Money. A statute of the city, moreover, directed that every bill drawn

on Amsterdam over a certain amount (600 guilders) should be paid in bank funds, thus necessitating every merchant to have a deposit with the bank. This institution, moreover, received bullion on deposit, crediting the depositor with a sum in bank Money equal to nearly what would result from the coining of the bullion, less the expense of such coinage. It also gave the depositor of bullion a receipt, which entitled him to the right of withdrawing his bullion within a given time upon payment of a sum of bank Money equal to the amount of the same with which he was credited for his deposit, plus an additional sum for the safe-keeping of the bullion ; but if the depositor failed to call for his bullion at the expiration of the time specified, the bullion became the property of the bank, and the depositor had no claim upon it, except for the bank Money with which he was credited. These receipts for bullion and credits for bank Money created two classes of creditors against the bank. The holder of a bank credit could obtain his money upon presentation of the credit—that is, the whole sum ; it could not be drawn or checked against in fragments—but the holder of such a credit could not obtain bullion from the bank without presenting a bullion receipt, which must be bought in the market with bank Money if not possessed ; and the holder of a bullion receipt could not draw out his bullion without paying the bank a certain sum of bank Money, which must also be done by buying a bank credit in the market if not already at hand. In consequence of these deposits being guaranteed by the city and the ingenious regulations just described, which operated like seigniorage (as explained in the first chapter) to enhance the price of bank Money and bank bullion, this institution was operated as a mere bank of deposit, according to the intent of its originators. So long as the coin and bullion were in the coffers of the bank, it held a premium, while if removed it sank to a par valuation with the mixed and depreciated

currency of the city. The business of the bank was thus entirely that of deposit, and its credits and bullion receipts remained in constant circulation, furnishing adequate means for protection of the commercial community against loss on exchange. These deposits of coin and bullion formed the only capital of the bank, and its business, under the regulations above named, was exceedingly remunerative, particularly its bullion transactions. It was for many years, so to speak, the bailee of all Europe for the safe-keeping of its metallic treasure. The city of Amsterdam received certain remuneration from the bank for the guarantee of its solvency, and the institution, both pecuniarily and in way of convenience, promoted the interests of the city and its commercial population. The deposits of the bank amounted in 1775 to the enormous sum of \$35,000,000, and its annual business reached the colossal proportions of \$4,000,000,000.

The bank failed in 1790, by reason of having loaned nearly the entire amount of its capital—which, it will be remembered, consisted of its deposits—to the States General, East India Company and the city of Amsterdam. It had, indeed, been in this bankrupt condition for fifty years, with its credit and bullion receipts all the while selling at a premium. It is amusing, in contemplation of this fact, to read the words of Adam Smith, written only about ten years before the failure of this institution, and forty years after it was in a state of perfect though secret insolvency. In his “Wealth of Nations” Mr. Smith says: “At Amsterdam, however, no point of faith is better established than that for every guilder circulated as bank Money there is a corresponding guilder of gold or silver to be found in the treasures of the bank.” The shrewd Dutch burgomasters who constituted the directory of the bank must have read these words of confidence of Mr. Smith with a grim smile of satisfaction at their ability of “how not to do it,” when for nearly half a century, comparatively speaking, the cof-

fers of the bank had been in a state of constant depletion. This fact, however, is forcibly illustrative of the truth we have often asserted in the course of this discussion, that faith—credit—is the basis of banking. Here was an institution which for fifty years had prosecuted an annual business of from \$3,000,000,000 to \$4,000,000,000 solely upon credit. It was all this time the supposed guardian of the treasure of Europe, and was, in truth, during this period of bankruptcy an efficient and indispensable agency for the exchange business of Amsterdam and many other important European marts. The exact loss to depositors by its failure has never been accurately stated, but some writers have asserted that such loss, by an arithmetical calculation, would be fully recompensed by the saving which the institution had afforded its customers in the business of exchange.

DIVISION SECOND.

THE NATIONAL BANKING SYSTEM.

A Monopoly—Its Origin—Its Adoption and Principal Features—The Advantages of the System—They are seen in its Material Basis, Government Bonds—The Arguments against this Feature of the System Examined and Refuted—They are also seen in the Element of Uniformity—Compared with the State Bank System in this respect—Also seen in the fact that Circulation cannot be in Excess—Its Disadvantages—A Monopoly—How a Monopoly—It sets an Arbitrary Limit upon the Extent of Circulation—In this respect, Unjust, Indefensible and in Violation of Economic Law—It robs the People of the Benefit of Circulation and confers it upon the National Banks—In this respect it Enforces Illegal Taxation—Minor Defects—The Theory of Convertibility, as applied to the System, fully Examined—The Conflict between the System and the Legal-Tender Notes—A Balance taken between the two—The Result in Favor of the Banks—The System, with certain Modifications, a Success.

In the second chapter of this treatise sufficient comment was made upon the banking system which preceded our

present National institution to warrant the omission of all matter which naturally prefaces the discussion of our present subject. It will therefore engage immediate attention.

The National banking system of the United States is, comparatively speaking, an unqualified monopoly. It is not a monopoly, however, in the same sense as are the banking systems of France and London. The colossal institutions which conduct the entire banking business of the English metropolis and the French nation are instances of monopoly by virtue of a contract existing between these institutions and the respective governments of France and Great Britain; while the National banking system of this country is a monopoly by force of statute law. It had its origin in a period when the United States were in the very midst of the most stupendous struggle ever waged for the preservation of liberty and the maintenance of constitutional government. Our advance upon Richmond had been stayed, not so much by opposing force as by conflict of executive and military authority; the feasibility of the Emancipation Proclamation was, in a measure, dividing public sentiment; the metropolis of the nation was in open rebellion against the draft of the General Government for men; and almost the only ray of hope that lent encouragement to this struggle for liberty and law was found in the tidings of victory which Rosecrans had written with a river of blood upon the banks of the Tennessee. Amid such surroundings the National banking system was inaugurated as a measure for the relief of Government. If it has defects, it is only surprising that they are so few in number—if merit, that so much attaches to the system as is, on all sides, admitted. That it has the former we propose to show, and the latter shall endeavor to maintain.

This system was adopted by an act of Congress approved February 25, 1863. Several amendatory acts have since been passed, and the principal features of the system, in

pursuance of these several acts of legislation, are as follows: \$354,000,000 of National currency, under the supervision of a Treasury bureau established for this purpose, with an official head styled the Comptroller of the Currency, are directed to be issued to associations of individuals throughout the country for the transaction of banking business, upon due proof of organization in accordance with the requirements of the act. Such associations must consist, at least, of five persons, with a capital of not less than \$50,000, nor more than \$500,000, to whom the right of succession by a corporate name shall belong for twenty years. The liability of each stockholder for losses is measured by the amount of his stock and other property in a sum equal to the value of the same. Fifty per cent. of the capital stock of any organization must be paid in before commencing business, and the remainder in ten monthly payments immediately thereafter. Upon payment of the said fifty per cent. of the capital stock, and a deposit, with the Treasurer of the United States, of Government bonds in a sum equal to one-third of its paid-up stock, and not less than \$30,000, an amount of the National currency hereinbefore named, not exceeding ninety per cent. of the value of the bonds deposited as aforesaid and the full amount of stock paid in, is issued to associations organizing under the act, as a means of circulation. This National currency assumes the form of promises of these institutions to pay Money on demand, with a statement of the Treasurer of the United States that such promises are secured by a deposit of Government bonds at Washington. The deposit of bonds before referred to is solely for the redemption of the above-named circulation. Any institution of this character may own real estate suitable for its business accommodation, and for security of debts prior to such conveyances as are hereafter named may take mortgages upon this species of property. Banks organizing

under this act in the cities of St. Louis, Louisville, Chicago, Detroit, Milwaukee, New Orleans, Cincinnati, Cleveland, Pittsburg, Baltimore, Philadelphia, Boston, New York, Albany, Leavenworth, San Francisco and Washington, are required to hold a sum of lawful Money equal to twenty-five, and all other banks a sum equal to fifteen, per cent. of the amount of their deposits and circulation, as a reserve for the payment and conversion of the same. Three-fifths of this reserve fund of banks outside of the cities above-named may consist of balances due such banks from similar institutions in said cities. All banks in the cities above-named must have an agency at some similar bank in the city of New York for the redemption of their circulation at par; and all banks not located in the cities above-named must have an agency with a similar bank in some one of these said cities for the purpose of such redemption. In lieu of all other Federal taxation a half-yearly tax is imposed upon these institutions in favor of the General Government of one-half of one per cent. upon the amount of the circulation, one-quarter of one per cent. upon amount of deposits, and one-quarter of one per cent. upon amount of capital stock not invested in Government bonds. As a basis upon which to make assessments in accordance with the foregoing, each institution is required to make five reports each year to the Treasury at Washington. The stock and real estate of each institution are subject to State taxation upon the same basis as other property of a similar character. Old State banks are empowered to reorganize under this act, and of the \$354,000,000 of circulation above described one-sixth may be in notes of a sum below five dollars, but not less than one dollar, until a resumption of specie payments, at which time no part of said circulation shall consist of notes of less than five dollars.

These, in a concise form, are the principal features of the National banking system. The further discussion of

the subject will be conducted—first, by a consideration of the advantages of this system ; second, by an examination of its disadvantages ; and third, by some general comment upon miscellaneous questions collateral to these two phases of the main subject.

An important advantage derived from the present banking system of this country is found in the character of its material basis—in the peculiar species of capital which serves as an ultimate fund for the redemption of the National currency—of the banking circulation—namely, Government bonds. The capital of these institutions, it is true, need not consist entirely of these securities, but they are at least required to invest these bonds to the extent of their circulation and ten per cent. in addition. This requirement in two respects provides a fund for the ultimate protection of the note-holder—for the redemption of the circulation—which is, so far as human agency can constitute it, both unimpeachable and indestructible. This is true, in the first instance, on account of the element of superior credit which attaches to this species of property. The bonds are an evidence of the indebtedness of the supreme power, the Government's notes of hand, secured, comparatively speaking, by all the property of every individual State and the nation. The acquaintance of the entire world with the maker of these bonds, with the strength, stability and integrity of their source of issue, renders them everywhere convertible into lawful Money in any amount with no more form or formality than that with which a laborer buys a loaf for his frugal meal. They have a place in the stock market of every commercial city, are salable in every village and provincial town, and are called upon 'Change in all the principal Money marts of our own and other countries. Their value, moreover, is fixed, stable and unsusceptible of any great change, except from causes which affect the value of all other species of property in a similar degree.

This requirement, in the second instance, provides an unimpeachable and indestructible fund for the protection of the note-holder, by reason of the fact that these securities are held in trust, for this sole, specific purpose, by the National Government. In this respect the note-holder receives far more ample protection than under our old State bank system. By this last system, with the entire capital of each bank, in most cases, under its own control and in its immediate possession, the same was often trenched upon—yes, frequently appropriated in toto—for the enlargement of the discount fund; and thus the note-holder of these State banks, with the exception of the time when the bank commissioners made their annual visit of inspection to these institutions, had no knowledge whether or not their currency was protected by a proper reserve. Under our present system, however, there is no fact more indisputably within the knowledge of every member of community than that for every dollar of National currency traversing the avenues of commerce there is a corresponding dollar and more of Government bonds in the Treasury at Washington to insure its redemption. The reader will notice that the foregoing remarks make the inferential assertion that the discount fund of our National banks is limited by the amount of their deposits. The use of capital for the business of discount or for any collateral purpose is indeed expressly forbidden by the act. In these respects the National banking system furnishes a means of protection to the holder of National currency for the redemption of circulation as absolutely sure as human wisdom can provide, while that of its predecessor was vacillating and uncertain.

This feature of our present banking system, however, has been strenuously objected to upon the following grounds. The argument is made that, in case of war, these securities, by reason of the combined facts of the existence of war and

the consequent necessity of making new Government loans, would depreciate in value to the extent of driving the banks into suspension of specie payments and frequent bankruptcy, on account of their resulting obligation to increase their deposits of these securities at Washington for the protection of their notes, and thus in the latter instance (bankruptcy) throw the additional burden upon Government of selling the bonds of the banks in its possession for the redemption of their circulation. The argument is specious, but not solid. Its entire foundation is the assumption of a certain depreciation in our Government securities, and this assumption, to the extent urged, is not warranted by historical facts. It is probably safe to suppose that this nation will never be involved in a more extensive and expensive war than that from which it has just emerged. The accompanying assertion is also admissible that, by reason of the successful termination of that war, and the more successful maintenance of our National credit by a steady reduction of the debt thereby incurred, greatly as revenue reformers may regret it, the securities of this Government in case of future hostilities would not depreciate to the lowest point reached during the late rebellion. But grant, for the sake of argument, that they would, and their average value would be about seventy-eight cents to the dollar—a depreciation of twenty-two per cent. The capital of the National banks at the close of this year (1871) is about \$500,000,000; circulation, \$325,000,000; bonds on deposit at Washington to secure the same, \$365,000,000. In the event of war these bonds, by the hypothesis, would depreciate twenty-two per cent., thus requiring an increase by the banks of their bond deposit in the sum of about \$80,000,000. The amount of this increase does not equal the difference between the aggregate capital of the banks and that portion of it on deposit at Washington, as above stated, by over \$50,000,000. In other words, in the event

of war, thereby depreciating Government securities twenty-two per cent., the National banks could make good their margin for the redemption of their entire circulation, and then have over \$50,000,000 of their capital in their own possession intact. These are facts. They are certainly not fraught with vaticinations of bankruptcy for our National banks in either the event of civil disturbances or foreign war. The foundation of this argument being destroyed, the whole structure falls with it. If war will not force our banking institutions into bankruptcy, the fund for the protection of the National currency will not be jeopardized, and the Government not be obliged to sell the bonds of the banks in its possession for the redemption of the same. As for specie payments, their suspension invariably follows the outbreak of extended hostilities under the most favorable circumstances.

The next advantage resulting to community from the National banking system is found in the argument of uniformity. Extended comment upon this point is entirely unnecessary. Its principal feature is that which renders the notes of a National bank as current in one portion of the country as another. This advantage, moreover, is an offshoot of the one which has just passed from discussion. The notes of the National banks possess this element of universal acceptability, for the simple reason that as they pass from hand to hand they convey the assurance that the lock of the National Treasury is turned upon an amount of Government bonds more than sufficient to warrant their redemption. The credit of the immediate bank of issue may be known or unknown, sound or uncertain, but the solvency of the indorser who has guaranteed their payment is everywhere notorious and undoubted. The lack of this uniformity was one of the cardinal defects of our State bank system. Despite the local character which was impressed upon the notes of these institutions, they found their way,

to a certain extent, through the deviating channels of traffic, to nearly every quarter of the Union. The reputation of the particular source of issue in these distant localities was, in a certain sense, entirely unknown, and the valuation of its currency diminished with the addition of every league to the distance which separated the paper wanderer from its birthplace. Unavoidable loss always resulted to the holder of such currency, and the published reports which presumed to furnish a criterion of its value often left the last state of their patrons worse than the first. Accuracy, in this respect, was impossible, and the legion of "bank-note detectives," "reporters," etc. which courted the service of the commercial world prior to 1863 were, in most instances, so many libels upon the credit of some of these institutions on the one hand, and seducers of public credulity on the other.

The evil of this lack of uniformity recoiled with terrible effect, at the outbreak of the war, upon the sections of country from which this doubtful currency, for the most part, had emanated. The merchants of the West, during the earlier years of the conflict, were not unfrequently obliged to pay for exchange on our Eastern cities as high as thirty per cent. That is, a Western merchant, in order to cancel obligations due Eastern houses, must make good the difference between the currency of Eastern and Western banks, which often reached the point above named. The National banking system, to such parties—and they by no means constituted a small portion of our tax-paying population—was a measure of almost incalculable benefit. This argument of uniformity, moreover, has been the subject of considerable objective discussion, and that in almost inexcusable terms of derision. In defence of the non-uniformity of the State bank circulation, despite the pernicious attendants of the same, as above stated, which could not be denied, the defenders of that system have cited the English,

Irish and Scotch banks as precedents to support their theory. They say, "Diverse species of circulation have proved a success in Great Britain; *ergo*, they must be equally feasible in the United States." Has any one ever denied the feasibility of a plan of mixed circulation whose territorial limits would not include a nation larger in area than the State of New York? The comparison is an absurdity. A resident of Devon, Munster or Dumfries can shake the hand of his neighbor in Northumberland, Londonderry or Sutherland by means of a pleasure-trip from night to morn, but a traveler from the Atlantic seaboard can catch the sob of the waves at the Golden Gate only at the end of a continuous journey wherein he has witnessed seven recurrences of a rising and setting sun.

Another advantage of immense importance resulting to community from the operation of the National banking system which has incidentally appeared in this discussion is found in the fact that under this system the circulation of our banking institutions cannot be in excess. In other words, the National banks, by the provisions of the act, can receive National currency for purposes of circulation only as they have deposited Government bonds at Washington for the redemption of the same, with an excess of ten per cent. Another safeguard against excessive circulation is here secured by an accompanying provision of the act, which forbids the issue of currency by any bank above the amount of its actually paid-up capital. These important principles require no elucidation or comment. The virtual absence of them in the old State bank system was the occasion of both official chicanery and individual loss.

The line of this discussion will now pass to a criticism of the vulnerable points of our present system of banking. The defects in this system of sufficient dignity to provoke a direct and searching investigation are only two in num-

ber. First, by virtue of the act establishing this system banking business in the United States is made a monopoly; second, in pursuance of the same authority the National banks derive nearly the entire benefit of circulation. Of these in their order.

In assuming that our present banking system is a monopoly, it is only intended to convey the idea that by the act establishing the same an arbitrary limit is set upon the amount of circulation, and consequently upon the number of banking institutions. In other words, the proper boundaries of our circulating medium and banking business are presumed to be ascertained by the artificial force of statute law. This is wrong in theory and perplexing in practice.

The reader must not in this connection take this proposition to be contradictory of the principles discussed in the chapter wherein "Resumption of Specie Payments" constituted a topic of investigation. It will be remembered that in that discussion the plan of curtailing our present circulation was advocated as a means of resumption, which of course inferentially asserts that to a certain extent statute law must define the requisite volume of our medium of exchange; and in the present state of things it must. The two propositions are harmonized by the statement that our protest against the application of statute law for the determination of the proper boundaries of circulation presupposes a status of specie payments. In other words, until currency becomes so inflated as to destroy, so to speak, the equilibrium between it and metallic Money, and in thus ousting the business of the country from a specie basis leave the prices of commodities to be measured by the amount of currency in circulation in accordance with the law of scarcity and excess, hereinbefore explained, statute law should not assume to prescribe the amount of money requisite for commercial purposes; but when that point is passed, this artificial force should be applied only to the extent of

replacing business upon the basis of metallic Money. Specie payments, then, constitute the real boundary-line between the dominion of natural and artificial force in the sphere of circulation.

Returning to the main argument, that this monopoly, as heretofore explained, is wrong in theory and perplexing in practice, the proposition is asserted, which has inferentially appeared in the interlocutory issue just dismissed, that this monopoly is thus theoretically defective because it violates one of the fundamental principles which govern the relations of Money to commerce. It is impossible for the arbitrary restraint of statute to regulate the necessary volume of circulation until, as before stated, the Rubicon of specie payments has been passed. Prior to this condition of things commerce is the only infallible conservator of its moneyed necessities. The natural law, already elucidated in this discussion, that plenty on the one hand drives products to sell in fields of want, and scarcity on the other drives money to purchase in fields of plenty, operates with a relative, though not absolute, force in this connection. Our present banking system is no exception to this general law. With specie payments established by a retirement of our legal-tenders, the limit now placed upon the amount of our circulation should be removed, and the door of banking business opened to all who have the inclination, necessary capital and requisite ability to prosecute it. The banks under the present system cannot issue circulation without securing it with Government bonds; the note-holder is consequently protected to the utmost, and the security and profit which capital always seeks furnishes sufficient barrier against the possibility of excessive investments of the same in banking pursuits.

The fallacy of these artificial restraints upon the business of banking and the volume of circulation is seen in the result of the recent attempt of Congress to "equalize the

currency," the features of which were stated in the history of the paper Money of this country in the next preceding chapter. The theory of a general statute attempting to make proper local distribution of circulation has been conclusively shown in this instance to be entirely unsound. The "equalization" offered has never been appropriated by the community in the extent predicated, and had Congress retired the legal-tenders, thus securing specie payments, and removed the limit upon circulation, the "equalization of the currency" would have taken care of itself. This matter of equalization cannot be appreciated by mere consideration of territorial area or extent of population. New England, with three millions of people, has always had four times as much circulation as the West with eight millions; and when, in answer to the complaint of the latter section of the country in this respect, in the winter of 1869 and 1870, the "equalization" was offered, it failed to avail itself of the privilege, for the simple reason that it then possessed all the circulation required for business purposes.

In directing attention to the second and last defect of any importance in our National banking system, the proposition is asserted that, in so far as the banks constitute the mediate, and the General Government the immediate, agency of circulation, the system is pre-eminently sound and wholesome; but in so far as the profits of circulation result, for the most part, to the banking institutions, the system is undoubtedly and unqualifiedly wrong. This is the defect of the present system as to circulation. A discussion of this phase of our circulation, in the manner indicated, savors a little of logical contradiction. The defects of the National banking system are assumed to be the immediate subject of inquiry, yet we are here coupling the statement of a benefit with the consideration of a defect. It could not well be otherwise. The two points

are so intimately associated that a sacrifice of logical propriety (greatly as the author dislikes it) seemed preferable to an assignment of these points to different sub-subjects, when examination of one borders so closely upon that of the other.

The abstract proposition that the circulation of a country devolves upon, and belongs to, the supreme power—the General Government—was sufficiently elucidated in the first division of this chapter to render argument unnecessary in support of the first point now under discussion—namely, that the present circulation of the United States is rightly under the control of the General Government. A word of qualification, however, is pertinent in this connection. By the abstract proposition above stated it was not intended to convey the idea that the Government should perform the ministerial duties in reference to circulation now assigned to the banks. The proposition was merely intended to assert that every discretionary power as to circulation should be exercised by Government, leaving the detail of the same, as under our present system, to the various banking institutions of the country. That this is the proper theory, as already stated, was shown in the prior part of this chapter, and as already seen, moreover, this theory is put in practice under our present system.

The second point mentioned under this last defect of the National banking system—namely, that the profits of circulation should not result to the institutions organized thereunder—will now receive consideration. This feature of the scheme is a virtual taxation of one portion of the community for the benefit of another. It is not a violation of the constitutional provision, which, in prohibiting the taking of private property for public uses without just compensation, impliedly forbids the taking of private property for private uses in all cases whatsoever, but it is a violation of legal ethics and good morals no less flagrant than it

would be if the inhibition of our organic law attached to its infringement. It appropriates public property for private uses without compensation, and in so doing constitutes a wrong of a dual character. The circulation of the country involves grave principles of public economics; it is interwoven with all the interests of commerce and productive industry; it is the motor-power which gives impetus to all public and private enterprises; it is the means by which the community prosecutes productive labor; and consequently not only devolves upon Government as a political duty of momentous import, but belongs to it—that is, to the people at large—as a *quasi* species of public property. By what color of right or reason is the exercise of this public function converted into an engine of profit in favor of a very limited portion of the community? It is not only wrong in principle, but unsupported by any extended precedent. The Bank of England, for instance, pays a tax to the English government upon its circulation equal to sixty-four per cent. of the profits derived therefrom, while our National banks at the close of the present year (1871) have a free gift of the interest of \$325,000,000 of circulation annually, less one per cent. upon the same, which, at six per cent. interest, amounts to \$19,305,000. These institutions are taxed upon their deposits and that portion of their capital not invested in Government bonds, it is true, but it is a very meagre tax, as will be seen by reference to the provisions of the act before mentioned, and a burden, moreover, which has always been imposed upon these species of bank property. This tax on deposits and capital is, moreover, a just and equitable one, as there is no good reason for granting an exemption to such property from the duty of contributing to the maintenance of government and law. The tax upon the people, however, of \$19,305,000 in favor of the National banks, finds no extended authority in precedents of either law or economics,

and has no foundation in either reason or justice. The legitimate source of banking profit is found in the business of discount and exchange. Circulation belongs to the people.

One or two defects in this system, of minor importance, will now be noticed. It will be remembered that a provision of the act requires the country banks to hold in reserve a sum of lawful Money equal to fifteen per cent. of their deposits and circulation, for the payment and redemption of the same. The act also permits three-fifths of this reserve to consist of balances due from city banks. This permission is an unwise expedient. It creates a competition among the city banks for the possession of these balances, whereby heavy interest is paid for the same, which results in a loan of this fund by the city banks for speculative purposes, and consequently robs legitimate business of a portion of the banking facilities that would otherwise accrue to it, and fosters speculative interests which are detrimental to general commercial prosperity.

Another provision of the act, moreover, limits the capital of any one institution to \$500,000. This is entirely faulty and impracticable. The true measure of the requisite capital of the National banks is the extent of commercial interests they are called upon to serve, and this depends wholly upon local causes and circumstances which are not in any way appreciable by statute law. The provision is an attempt to distribute the circulation among a greater number of banks, for as the amount of the same is limited, the larger the capital of any one institution the fewer will they be in number. As already claimed, the limit upon the circulation should be removed concurrently with a return to specie payments, and each institution left to decide upon its proper amount of capital in accordance with local needs and requirements.

An examination of some miscellaneous points which

bear upon this system in a general manner will conclude this discussion.

In the first division of this chapter the proposition was maintained that primal convertibility of bank notes is entirely unimportant if the ultimate redemption of the same is assured—that solvency of the source of issue, and not convertibility of the note, is the prime requisite of circulation. It was also shown, in the connection above referred to, that absolute convertibility—that is, a dollar of specie in reserve for the conversion of every dollar of circulation—has never existed in the entire history of banking; that it has always been a mockery and a myth. This discussion of convertibility does not require, and will not receive, repetition in this connection, but the force of the principle above maintained is peculiarly applicable to our National banking system. The feature of convertibility incorporated into this scheme is perfectly idle and inadequate, like all of its predecessors. The act requires the banks to hold in reserve a sum of lawful money equal, upon an average, to twenty per cent. of the amount of their deposits and circulation, for the payment and conversion of the same. The amount of bank deposits and circulation at the close of the present year (1871), as already stated, is \$925,000,000. In accordance with the provision of the act above named, \$185,000,000 represent the fund which the banks must hold in reserve for the payment of this circulation and deposit indebtedness. To what extent it would operate in this direction arithmetical calculation will determine. This feature of the system is not only idle and inadequate, but perfectly useless. The amount of lawful Money reserve required by the act is not necessary to furnish the banks with what ready cash must be had to meet such checks, bills and notes as cannot be paid by a mere transfer of deposits, as explained in the first division of this chapter; for, though even every dollar of circulation to which the banks

are entitled is absent from their vaults, the portion of their deposits which is made up of currency, instead of bills, notes and checks, is abundantly sufficient for this purpose. This amount of lawful Money reserve, moreover, is not needed to secure the final redemption of the circulation ; that is fully assured by the deposit of Government bonds at Washington. This feature of the system is, in every respect, mere surplusage, as the whole scheme of convertibility in the abstract, so far as it has ever existed, is entirely unimportant and of no consequence so long as absolute solvency is assured, as under our present system. It merely tends to increase the amount of banking capital, and if the profits of circulation are to be reserved to the banks in the future, Congress had much better abolish the reserve system and direct these institutions to subscribe to the loans of Government to the extent of this reserve—namely, \$185,000,000—as a partial consideration for the profits of circulation.

The objection may be here raised that the depositors of the banks have a right to demand that this reserve should be held for their protection. Before proceeding to combat this position, it is perhaps proper to say that (granting the claim, for the moment, to be a just one) even though the entire reserve now required by the act should be set aside and held inviolate for that purpose, it would be very inadequate therefor. The reserve fund at the present time (the close of the year 1871), as already seen, is \$185,000,000, and the amount of deposits, as also already stated, \$600,000,000. But the depositors have no color of right or title, so far as Government is concerned, to any reserve fund whatever for their protection, although, with the note-holders, they are theoretical participators in the assumed benefit of such a fund under our present system. There is no privity of contract, or even estate, if the last expression may be here used, between the depositors and

Government. The banks in no respect constitute agencies between the Government and depositors, whereby, by force of law, the former is responsible to the latter for maladministration of the banks in respect to their deposits. The matter of deposit is solely and entirely a contract between the banks and their depositing customers. The latter became a party to the same by their own volition, and not in pursuance of any compulsory measure, either direct or indirect, of the General Government. They are bound to exercise their own discretion and judgment as to the efficiency and honesty of the particular bank management with whom they entrust their funds. Moreover, this deposit fund, as already seen, constitutes the basis of the business of discount; and if the latter is properly worked the collaterals placed with the banks as a prerequisite to the procurement of discount furnish ample protection to the owners of these deposits. Their safety merely depends upon the honesty and capacity of the bank directors, and of this, as already stated, the depositors are bound to be their own insurers. The only party between whom and the Government the banks occupy the position of agent, thereby making the former responsible for the validity of their transactions with such party, is the note-holder—the possessor of circulation—of the National currency. The Government is pledged for the faithful conduct of the banks in this direction, for it holds a portion of their capital as security therefor, and this guarantee of the Government, moreover, is made, by the National banking act, a condition precedent to the circulation of the National currency. There is a striking contrast here between the justice of our present, as compared with the injustice of the State bank, system. Under the latter, one fund, in most instances, was responsible for both deposits and circulation, which placed the note-holder upon an equal footing with the depositor as a creditor of the insolvent institutions. The opposite charac-

ter of our present system in this respect has been already explained.

In the second chapter of this treatise, where the legal-tender notes formed the subject of discussion, reference was made to the fact that the defenders of this particular species of our paper Money have ever demanded the abolition of the National banks, the consequent withdrawal of the circulation, and the substitution of additional legal-tenders in its room. The claim was in that connection pronounced unreasonable and impracticable, and the reader referred to this discussion for proof of the statement. It will now be afforded.

Stating the proposition of these legal-tender romancers a little more in detail, they would withdraw the \$325,000,000 of National bank currency, issue an equal amount of legal-tender notes in their room, and with these notes buy up \$325,000,000 of Government securities, thereby reducing the interest on our public debt in the sum of \$19,500,000. The first objection to the plan is, that it would inflate the actual circulation of the country to the extent of \$107,000,000—an end certainly not to be very devoutly wished, when we already have an excess, as already shown, of fifty per cent. of the same. It would result in this inflation in the following manner—namely: the first step in the programme is to cancel the \$325,000,000 of bank currency; the second, to issue an equal amount of new legal-tenders, and with them buy in the bonds held at Washington to protect this currency. Practically speaking, the holders of the bank currency would get the new legal-tender notes in place of the former (the bank currency), and the Government by the operation would have canceled the bonds on deposit (and drawing interest, it is true) for its redemption. Very good! So far there is no inflation or contraction. But the foregoing acts abolish the National banks; and these institutions are now holding, as already stated in a prior chapter,

\$107,000,000 of legal-tenders as a partial reserve for the payment of deposits and redemption of circulation. This sum lies inactive in the vaults of the banks, withdrawn from actual use as a medium of exchange; but destroy the banks and you let loose from their prison-house the above amount of legal-tenders to swell the volume of our circulating medium. They are not wanted. The plan, in this respect, would create great disturbance in the commercial world, enhance the prices of commodities, thereby inducing reckless speculation, and inflict a loss upon community which \$19,500,000 could by no means measure, allowing for the moment that this amount of interest would be saved by the operation. The scheme is faulty, in the second instance, moreover, because it would not result in the saving of this amount of interest. By just so much as the volume of legal-tenders is increased, in just that relative ratio will their value depreciate. The sum-total of the legal-tender issue is \$357,500,000. Of this sum, \$107,000,000, as already stated, are held by the National banks as a partial reserve for the protection of their deposits and circulation, thus leaving only \$250,500,000 of these notes in actual use as lawful Money. But by the abolition of the National banks, and the consequent release of their legal-tender reserve (namely, \$107,000,000), the amount now in actual circulation (\$250,500,000) would be increased to the extent of forty-one per cent. The value of these notes would consequently be subject to a relative depreciation. They are worth at the present time (the close of the year 1871) eighty-eight cents to the dollar. Reduce this valuation forty-one per cent. by an increase of the amount in actual circulation to that extent, and their current worth would be fifty-two cents to the dollar. \$325,000,000 of new legal-tenders, in lieu of our bank currency, would consequently purchase \$169,000,000 of Government bonds. The saving of interest on these securities, as proposed by this scheme,

is consequently measured by a sum equal to the interest on \$169,000,000, which is \$10,140,000. The Government would also gain by this scheme the profits of circulation that now result to the banks, which by prior circulation (namely, the interest on the amount of circulation, \$325,000,000, at six per cent.) amounts to \$19,500,000. The income resulting to Government from an annual tax of one per cent. on the circulation of the banks (\$325,000,000), however, amounts to \$3,250,000. Abolish the banks and this means of income to the Government would be destroyed. The National banks hold on deposit the sum of \$600,000,000. On this sum the Government levies an annual duty of one-half of one per cent., which amounts to \$3,000,000. Abolish the banks and this source of National revenue is lost. Of the gross sum of banking capital, \$62,000,000 are not invested in National bonds. On this sum the Government imposes an annual burden of one-half of one per cent., which amounts to \$310,000. Abolish the banks and this right of assessment is gone. The aggregate capital stock of the National banks is about \$500,000,000. On this sum the several States lay a tax which yields a yearly return of about \$12,000,000. Abolish the banks and this State tax participates in the abolition.

Let us now strike a balance between our legal-tender friends and the General Government in pursuance of this scheme, and see what will be the result :

The Legal-Tender Notes

In Account with the National Government.

To Loss of Tax on Circulation.....	\$3,250,000
To Loss of Tax on Deposits.....	3,000,000
To Loss of Tax on Capital not invested in Government bonds.....	310,000
To Loss of State Tax.....	12,000,000
Total.....	<u>\$18,560,000</u>

Contra.

By Interest saved on Government bonds.....	\$10,140,000	
By profits of Circulation.....	19,500,000	
Total.....	\$29,640,000	
Balance in favor of Legal-tenders.....		\$11,080,000

The above sum of \$11,080,000, not taking into consideration any collateral circumstances, represents the apparent immediate saving which would result to our Government from the adoption of this legal-tender scheme. The saving is, however, only apparent, and in no respect real. There are resulting circumstances of evil attendant upon this scheme for which the paltry sum above named furnishes no adequate offset. As already seen, the proposed abolition of our National banks and the substitution of Legal-tenders for their circulation would inflate our already excessive issue of paper Money in the sum of \$107,000,000, or about sixteen per cent. Our entire commercial interests would suffer a relative disturbance and convulsion. Prices would be enhanced in a ratio commensurate with the increase of our paper currency, the creditor class of community would be mulcted out of sixteen per cent. of their outstanding debts, the laboring and agricultural classes would be placed under heavier burdens, as shown in the next preceding chapter, and the country would be \$107,000,000 farther removed from a resumption of specie payments. \$11,000,000 nor \$11,000,000,000 would not adjust the loss arising in these various directions, saying nothing of the general damper and discouragement which would be inevitably thrown upon all prospective enterprises. There is, moreover, another aspect of the question. Our National currency is secured by interest-bearing Government bonds. Our legal-tenders, materially speaking, rest upon no security whatever. A substitution of the latter for the former would be a compromise of the National honor, and

inflict merited and lasting injury upon the credit of the General Government.

This concludes what was intended for an eminently impartial discussion of the National banking system. Its merits have been portrayed, but not exaggerated; its defects subjected to criticism, and not excused. It originated in necessity, and has proved itself worthy of credit, confidence and support. With the limit upon circulation removed and the profits of the same secured to the people, thereby divesting it of its character of a monopoly and restricting it to the legitimate offices of banking—namely, deposit and discount—it would reflect honor upon American legislation and challenge comparison with the banking systems of the entire world.

CHAPTER IV.

PUBLIC DEBT AND FUNDING SCHEMES.

THIS chapter will be divided into two divisions—namely, Division First will treat of Public Debts, and Division Second of Funding Schemes.

DIVISION FIRST.

PUBLIC DEBTS.

The Origin of Public Debt—Historical View of the Same—The Causes which impel Nations to run in Debt—Public Debt in Europe—How Contracted in General—The Different Expedients adopted for Payment of the Same—The Theory that a National Debt is a National Blessing, Examined—It is for England, but not for the United States—It Depends upon the form of Government—Minor Comment.

A National debt, although unknown to countries in the earlier stages of civilization, has almost invariably become the normal condition of nations that have made extended

advances from the confines of barbarism. The condition of things which surrounded a youthful state prior to and during the most of the period known in history as the Middle Ages was very different from that attendant upon an infant government since the dawn of the seventeenth century. During the earlier stages of human progress above referred to, the incentives to emulation in the establishment of commercial pursuits, the aggrandizement of territory and attainment of political power were very insignificant as compared with those which were the natural outgrowth of the final demolition of the feudal system and the advent of the Reformation. In these days of limited knowledge, restricted culture and absolute subserviency to kingly and priestly rule the expense requisite for the maintenance of government was, comparatively speaking, trivial in the extreme. An aspiration by the masses to either the right of property or the privilege of thought was treason on the one hand and heresy on the other. The feudal barons had choked the first, and an impious clergy throttled the last, beyond even the faintest show of resistance. As the income of the feudal barons was great, so was that of government perfectly enormous as compared with the meagre outlay necessary for purposes of state. The spirit which prompted the enslavement of both enterprise and thought was naturally associated with an inherent avarice and miserly greed. Governments prior to and during the Middle Ages are consequently seen to have been in many instances hoarders of metallic wealth and treasure. So far down as the reign of Frederick of Prussia, Henry VI. of England and Henry IV. of France accumulation of public wealth marks the progress of most of the kingdoms of Europe. The only notable exception is Spain, who was wretchedly in debt at the middle of the sixteenth century. With the shackles stricken from thought and action, however, the standard of public as well as private morals is

strengthened, and incentives to national as well as individual emulation are interwoven with all the conditions of government and its subjects. At this juncture is found the origin of public debt, which claims at least a passing allusion.

As states or nations advance in commercial pursuits, their intercommunication becomes constantly extended, their projects cross each other in converging paths, and the material ends which different powers are in search of are, in many instances, identical. This produces a conflict of interest, a friendly strife to distance competitors, outlays for augmentation of means to secure the desired ends, the courting of foreign favor, an increased efficacy of home government, the establishment of internal improvements, and, very frequently, territorial extension. All this, to a certain extent, is absolutely imperative; and in all this, moreover, public debt, in any great measure, is rarely incurred, except through incompetent administration, as in the case of ancient Spain. Accumulation, however, in such stages of public advancement is next to, if not quite, impossible. But in these commercial strides the conflicting interests above named sometimes eventuate in war, and here, with the absence of accumulated treasure, is found the germ of national debt. The enormous expense attendant upon the prosecution of hostilities compels governments unpossessed of hoards to anticipate their means of revenue and enter the money market among the list of borrowers. Their proposals for loans, particularly in commercial countries, are in most instances very easily acceded to. This is true for various reasons. The safety of commerce and the fortunes of those who have embarked in commercial pursuits is entirely dependent upon the preservation of government. It consequently becomes a commercial people to see to it that the demands of state for Money to maintain not only its prestige among nations, but

its very existence even should be promptly responded to. It is, indeed, although a duty paramount to all others that require execution at the hands of every loyal citizen, a mere matter of individual and social policy—the simplest act of self-preservation. Beside this more important reason for instantly supplying Government with one of the main sinews of war, there are several minor ones which are not prompted by a sense of public duty, but spring from motives of individual greed and avarice. The demands of Government for supplies and ammunition always tend to stimulate productive enterprises and extend the limits of traffic—the two motor and major forces of commercial states. The war-consols of Government always bear heavy interest, and form a means of security upon the hypothecation of which their holders can always obtain loans to any amount and upon the most liberal terms. Commercial governments, accordingly, always give and accept the challenge of war with the utmost confidence that, even though their cause be not wholly just, the majority of their subjects will grant them abundant and immediate support. In addition to these forces of public duty, self-preservation and individual greed, which rush to the support of governments engaged in war, there is always an element of national pride, akin to loyalty, which augments the willingness of a people to lend its rulers every accessory that will conduce to the assurance of ultimate triumph. This foreknowledge of Government, so to speak, that both material and moral aid will be placed at its command for the waging of either a just or an unjust war has dotted the records of the necrologist with many a narrative of untimely death, clouded the escutcheon of both ancient and modern powers with shame and dishonor, and in many instances consigned them to a merited and endless oblivion. “The pathway of human improvement,” in the language of an enthusiastic, not to say intemperate, writer, “may have been in all ages and

countries macadamized with bones and wet with blood," but it is a question not difficult of solution whether this "pathway" would not ere this have opened more extended fields of civilization, unfolded richer depths of science, and familiarized the world more generally with the beauty and usefulness of art, had it been laid, to some extent at least, with less costly and more inanimate treasure. This truth has received a merited and long-delayed appreciation by two of the principal nations of the world in the conclusion of the Treaty of Washington between the United States and Great Britain for the adjustment of divers and conflicting claims of territory, treasure and national honor. Our late civil war achieved the most sacred and justifiable victory that has ever been recorded in the annals of military strife. The Franco-Prussian conflict of 1870 resulted in a triumph which emblazoned upon the standard of Germany the most brilliant campaign since the days of the elder Napoleon, exalted the new empire to the foremost position in Europe, and taught both the Continent and the English isles that educated thought is a force far more powerful than a proscribed culture, an enslaved peasantry and half-starved artisans ; but the subjugation of assertion to proof, of passion to reason, of violence to logic, of brute force to intelligent thought, which was witnessed in the submission of the grave and portentous differences between the United States and Great Britain to an international tribunal for final and irrevocable settlement, is a victory by the side of which military conquests pale into insignificance, and an event of more stupendous import for the cause of human progress than any that has drawn the attention of mankind since the advent of the Christian era.

The principal nations of Europe established the custom of incurring national debt in the latter portion of the seventeenth century, and for the most part to relieve their finance departments from the pressure of existing war.

The exhaustive home and foreign struggles of that period involved France, England and Holland in expenditures far beyond the amount of their immediate revenues, and incumbered them with liabilities which have never yet been fully canceled. In the war which commenced on the continent of Europe in 1668, and afterward extended to the American colonies, and was finally terminated by the Peace of Ryswick in 1697, England for the first time assumed pecuniary obligation as a government. At the close of the period of hostilities above named the English Government was a debtor in the sum of about fifty millions sterling. The Seven Years' war, ending in 1762, increased this sum to about one hundred and fifty millions sterling, and the American Revolution swelled this amount by nearly one hundred and fifty millions more. The tremendous struggle with Napoleon at the close of the seventeenth and beginning of the eighteenth century, however, was the cause of its present enormous extension. The banishment of the Corsican to St. Helena, indeed, cost the English Government over five hundred millions sterling, and its present indebtedness amounts to nearly \$4,000,000,000. Prussia, in fact, was the only kingdom of any considerable importance which emerged from the convulsions of the eighteenth century with insignificant pecuniary liabilities.

Public debts have been contracted by nations in much the same form and manner as private ones by individuals. European nations have invariably borrowed, at first, without security, upon their mere corporate credit. This portion of the liabilities which are still outstanding against the different governments of Europe constitutes what is termed the unfunded debt of these countries. They consist of mere Government notes of hand, like the promissory note of an individual. From this incipient stage of national indebtedness the empires of the Old World have proceeded to make loans by mortgaging the public reve-

nues; and this has been done by two different methods. The first of these methods has been to mortgage a particular source of revenue for a short period only, and the fund mortgaged was predicated to be sufficient to pay both the principal and interest of the debt at the expiration of such period. This is properly designated a loan by anticipation. The second of these methods has been to mortgage a particular source of revenue for perpetuity, and the fund mortgaged was only predicated as sufficient to pay the interest upon the debt incurred. This method is properly known as funding, and will be fully considered in the second division of this chapter. An instance of the first method is seen in an ancient custom of France which was known by the title of "farming the revenues." This was done by mortgaging to capitalists the right to collect certain taxes from the people, in pursuance of an assessment of Government, for a given number of years. For instance, if the Government laid an annual tax upon distilleries or any other species of industry, which amounted, say, to \$1,000,000, this tax would be "farmed" out to capitalists in the manner above named, for say twenty years, upon payment by them to Government of \$20,000,000, less the amount of interest charged for the loan. A subsequent method adopted by European nations in contracting public debt has been by the sale of annuities for lives or years. This is also a species of funding, and its full consideration belongs to the second division of this chapter. A great portion of the early public debt of France was contracted in this manner. The United States have contracted public indebtedness, for the most part, upon their corporate credit as first above described, and by the sale of interest-bearing Government bonds, with the privilege of redemption at par at any time within certain specified limits. That portion of our debt contracted upon corporate credit corresponds to the unfunded debt of European nations, and is

very truthfully and emphatically illustrated by our legal-tender notes. Instances of the last-named species of United States indebtedness are found in the five-twenty and other bonds of Government.

The means for payment of national debts, and the expediency of such a policy, have been prolific sources of both public and private discussion. Nations, like individuals, have found it much easier to incur pecuniary liability than to obtain a release therefrom by a full discharge of such obligations. National debts, indeed, when augmented to any considerable extent, have never, with very few exceptions, been entirely paid. The attempts of governments in this direction, and the means resorted to for the attainment of such an end, have in many instances reflected great discredit, if not absolute dishonor, upon some of the leading powers of the Old World. History is replete with illustrations of this character, and a few of the most noticeable will receive a passing allusion. Reference will be first had to the plan adopted by European governments of reducing their public debt by means of "raising the coin denomination." This is the technical term affixed to this would-be economic institution by its founders. It is a process, however, akin to "watering stock," and is an act which, "when done with a less dainty grace, plain folks call theft." It consists in a diminution of the quantity of precious metals which enter into the composition of the current coins of Government. For instance, if twenty grains of pure coined gold had passed current for one dollar, Government might "raise the denomination" by decreeing that fifteen grains of coined gold should thereafter constitute a circulating symbol of the value above named. In this way Government would reduce its indebtedness twenty-five per cent. or one-fourth, for, as the same was incurred upon a basis of twenty grains of gold to the dollar, it compels its creditors to receive fifteen grains of that

metal for the discharge of an obligation which originally promised twenty grains. The ancient republic of Rome furnishes history with one of the earliest instances of this method of canceling public indebtedness. The *as* was the principal current coin of this nation, and by it the value of all the other Roman coins was estimated. It originally contained twelve ounces of copper, but at the close of the first Punic War, B. C. 256, which left the republic greatly in debt, the denomination of this coin was "raised" by decreeing that two ounces of this metal should thereafter constitute the circulating symbol above named. This reduction of the Roman *as* of course reduced the debt of the republic to one-sixth of its original amount. King John of France, in the fourteenth century, added not a little to the efficiency of this method of canceling public indebtedness by associating an "adulteration of the standard" with the raising of the denomination; that is, he increased the amount of alloy in the current coinage of his kingdom. For example, if the composition of a five-franc piece consisted of four-fifths pure metal and one-fifth alloy, the standard would be adulterated by changing this composition to say three-fifths pure metal and two-fifths alloy. For the purpose of reducing his immense public debt the French king resorted to both these expedients of raising the denomination and adulterating the standard. The unique and creditable method of canceling a public debt by raising the denomination, which originated with the Roman republic, was seemingly of sufficient adequacy to commend itself to the judgment of all the nations of Europe; but not till King John had nursed this youthful paymaster of the Romans to mature manhood, as above described, did our English cousins appreciate the desirableness of the institution. The idea, however, crossed the English Channel in 1545, and Henry VIII. fittingly concluded the long list of pious acts which had characterized

his reign by religiously following the example of his French neighbor, in raising the denomination and adulterating the standard of the English coin. Scotland, also, under the reign of James VI., adopted the same harmless expedient, but the mysteries of the science have not been sufficiently explored this side of the Atlantic to result in its adoption by the United States, although, as will be seen in the next succeeding chapter, plans no less subtle and comprehensive have been proposed for the payment of our present national debt. The period of their incubation, however, measured the entire limit of their existence, and efforts for their resuscitation seem wellnigh abandoned.

The policy of paying, or even reducing, a public debt, as already indicated, has been gravely questioned by some of the oldest governments and most experienced statesmen. The idea of leaving the principal of such indebtedness for ever intact, and merely paying the interest, has received stronger indorsement from Great Britain than any other country. The theory is there upheld, familiar to all by its title at least, that "a national debt is a national blessing." The question is one of the gravest possible import, and an examination of the same may be safely prefaced with the assertion that the foregoing English doctrine will not admit of being reduced to a maxim which should have universal application. The question of the feasibility of a public debt is a matter of public policy, and the shaping of such policy is dependent upon the peculiar circumstances and conditions of both governments and people. As Chancellor Kent has tersely expressed it, "Policy is a series of calculations and combinations arising out of times, places and circumstances, and it cannot be reduced to absolute simplicity and certainty." The English Government is that of a constitutional monarchy. By force of tradition, and also its organic, constitutional and municipal law, it scouts every idea of change and innovation. It contemplates a

perpetual and changeless existence. It is, for all this, in a great measure, by force of guarantees in its organic law, a government of the people, and one of the grandest fabrics of government, moreover, which the mind of man has ever deduced from the experience of the civilized world. From the people, to a great extent, it derives its power, and upon them it is partially dependent for the continuance of its reign. In consequence of these facts it becomes the paramount interest of the English Government to make its continuance an absolute prerequisite to the prosperity of the people; and for the attainment of this end it has, for a long period (nearly two hundred years), pursued and cherished the policy of having an outstanding public debt. Great Britain owes nearly \$4,000,000,000. The Government obligations which form the evidences of this indebtedness constitute the basis of many of the most stupendous industrial schemes of the English people, and make up a large portion of many of the fortunes of English capitalists. The continuance of the present Government of Great Britain has thus been made one of the dearest objects of the care of a major portion of her moneyed and aristocratic classes—the motor forces of the English realm—by fostering the policy of a public debt.

The principle upon which the idea is founded, however, that “a national debt is a national blessing,” tends to the seduction of national honor. A people whose individual interests are entirely merged in the existence of their government usually protest against giving or accepting the challenge of war, however just may be the provocation, for fear of national, and consequently individual, overthrow. The Government of Great Britain has not escaped the evils of a public debt in this respect. The convention of 1856 which followed the close of the Crimean war, and to which the English and Russian Governments, with other European powers, were parties, was peremptorily dissolved in

1870 by the emperor of Russia, so far as her exclusion from the Bosphorus was concerned, without even a preliminary request for a modification of the treaty; and this flagrant violation of international law the English people would not suffer their Government to resent.

Under a democratic or republican form of government the question of a public debt presents itself in an entirely different aspect; and the claim that it is "a national blessing" may, in this connection, be gravely doubted, if not positively denied. The abstract proposition that the support of government constitutes one of the most politic duties of every people admits of no contradiction. It is a self-evident truth. There is a marked distinction, however, in the application of this principle to republican or democratic and monarchical forms of government. Republican and democratic institutions are based upon the theory that, while the form of government shall remain fixed and immovable, the executive power which administers the government shall be subject to frequent and regular changes. Monarchical institutions, however, whether absolute or limited, are based upon the theory that not only the form of government, but also the executive power which administers it, shall be alike permanent and unchangeable. In the former case, the individual, comparatively speaking, is only interested in maintaining the government itself: the preservation of the same identical executive power is a matter of little or no consequence. The government can live though the executive die; the organic law can continue though its administrator be changed. In the latter case, however, in most instances, the government and the executive power, speaking in the abstract, are wedded beyond the possibility of divorcement, except at the expense of the former's annihilation. They are integral parts of one common whole, and are both requisite for its continuance. If the executive changes, it is only in response to

a demand for a change of organic law, and such executive variation consequently involves an inevitable revolution of the form of government. The individual, in this instance, is therefore interested not only to preserve the Government in its stability, but also to maintain the same identical executive power in perpetual continuance; and this is done by legalized succession. These distinctive features in republican or democratic and monarchical forms of government destroy the universality of the would-be maxim that "a national debt is a national blessing." In the former instance a public debt is associated solely with the Government, and not in any inseparable manner with the executive. The maintenance of Government or a due regard for the sacredness of its pecuniary liabilities does not in any way imply a maintenance or indorsement of the executive power. This last *must* change, whether it will or no. In accordance with the genius and spirit of republican and democratic institutions, moreover, this change is effected without any shock to Government itself—to organic constitutional law. A public debt in republican and democratic countries, then, can only draw the support of the people to Government and not to executive power. The question is here pertinent, Can the support of a democratic or republican people for their Government only be assured by making them financial creditors of such Government? By no means; and the reason is simple, plain and easy to be understood. A republican or democratic form of government is the great *desideratum* of every people on the face of the globe. It is counted to be the synonym of the most perfect and unqualified personal liberty—a liberty qualified by legal restraint only to the extent of giving security to life and property. Will a people who possess what is believed to be the most lenient and liberal government ever established wish for a different one? Not at all. An affirmation of this question denies the most common

instinct of humanity. The law of change, either among individuals or nations, is based upon the hope of a betterment of present condition. Destroy republican government, and where shall we find its superior? Neither the experience nor ingenuity of man can at present afford an answer. Is a public debt, then, necessary to increase the love of a people for a Government for whose superior they seek in vain? Nay more: Will such an incumbrance enhance the splendor of an institution which without such incumbrance is esteemed perfect? Perfection is not thus beautified. The argument that "a national debt is a national blessing," so far as republican and democratic institutions are concerned, recoils upon itself. A public debt for such governments is but a cloud upon the title of their desirability.

In monarchical governments it is different. A public debt is here associated with both the government and the executive power. A maintenance of the first and a due regard for the sacredness of the second imply a continuance of the third. Destroy monarchical government, and its subjects implicitly believe they can find a better in republican institutions; but destroy monarchical government with the major portion of the wealth of its subjects invested in Government securities, and you also destroy the dearest interest of these subjects—namely, their property. As a watchman who shall guard the door of exit between a monarchy and a republic, "a national debt may be a national blessing," but what need of this watchman at the closing portal of republican government? The dim future is unexplored by man and enveloped in all the mists of obscurity.

These principles have found constant and continued practical expression in the form into which monarchical and republican indebtedness has been funded. The former has ever been made perpetual, the latter finite and determinable.

As public debts have been incurred, for the most part, only in time of war, and as history has proven, moreover, that the resources of nearly every country which has been involved in hostilities might have yielded a sufficient return from taxation without jeopardizing the solvency of the people to meet the expenses of war as they arose, the question is often asked, Why contract a public debt in any instance? Why not pay as we go? There is only one reason, but that is a very grave and important one. In an era of extended hostilities there is always more or less dissatisfaction with Government among a certain proportion of the population. The party opposed in politics to the one in power will always loudly protest against taxation for war-expenses, and as there is no point upon which the masses are so sensitive as the appropriation of their wages and profits, Government is absolutely compelled to make its tax levies as light as possible, else the discontented element will reach such proportions as to entirely cripple the resources of Government and add civil revolution to the evils of foreign war. This thought will be farther pursued in the next succeeding chapter.

DIVISION SECOND.

FUNDING SCHEMES.

Nature and Origin—Funding defined—Details examined—Sinking Funds—Historical View of the Subject—The Results of Funding—The Various Schemes fully examined—Opinions of Eminent Writers upon the same.

THE process of funding among nations has ever been a favorite method of escaping from the embarrassment of a floating debt of matured and dishonored obligations. It has always, moreover, been a very expensive means of release from such embarrassments. Nations, like individu-

als, always place a high estimate upon the probabilities and possibilities of the future. In this land of the unseen they discover a panacea for all present difficulties, a full and final discharge from the struggle of surrounding circumstances. The past is deemed a misfortune, if not an injustice; the present is counted an anachronism; and the future is alone credited as the agency which shall blot out the misfortunes of the past, banish the inconsistencies of the present and shower wealth upon the efforts which have hitherto been robbed of their just reward. As William Hamilton forcibly says, "The past does not interest, the present does not satisfy, the future alone is the object which engages us." In the funding of a public debt nations always discount these expectations of the future at a heavy rate of interest—they mortgage its prospective returns at an almost ruinous sacrifice. This is true partly from compulsion and partly from causes above intimated. Human nature, in the presence of difficulties which must be removed by means of present exertion and self-denial, or else evaded by a purchased postponement wherein the period of payment for such purchase is also *in futuro*, is generally conservative in its action and adopts the latter alternative; but in the pursuance of this alternative it is radical in its conduct and pays dearly for the favor of time. These general remarks foreshadow the character, causes and evils of a funding scheme. They will now be examined in detail.

The interrogatory, In what does a funding scheme consist? may be answered in a general sense by the statement that it is the merger or conversion of a past due, unsecured debt into an interest-bearing obligation or security upon the predication of regular payments of the yearly interest thereon, with the time for payment of the principal postponed either for perpetuity or a fixed determinate period. Funding schemes always assume one of these two forms, with the usual qualification that Government may redeem

the obligation at option, within specified limits, upon payment of the principal at par. This optional limit varies according as the date of maturity of the obligation is determinately fixed or postponed for perpetuity. In the first instance it usually embraces the time between the end of five, ten or any number of years, as the case may be, after the date of the obligation and the period fixed for its maturity. In the second instance this option usually attaches concurrently with the date of the security, and may be acted on at any time thereafter. These two forms of funding, moreover, may either assume the shape of a mortgage of a particular source of revenue to the Government, or the execution of the Government's bond, which by force of law creates a lien, an incumbrance, upon all the material wealth of the country as security for its payment. In both instances, therefore, the security is abundant and unexceptionable, since, by exercise of the right of taxation, the Government can legally appropriate the entire wealth of the country on the one hand, and mortgage the same by its bond on the other. The par at which Government has the optional right of redemption may be, but is not necessarily, the sum of Money which Government originally received, but is the amount stamped upon its bond or mortgage; and these two sums are scarcely ever the same. For instance, Government may have an outstanding debt of \$50,000,000 to fund, and for this purpose it will sell its bonds of say \$1000 each at six per cent. interest, to pay the \$50,000,000 of its past due liabilities. These bonds will usually sell at a discount, say ten per cent., so that for every \$1000 bond issued Government would only receive \$900. The par at which it would have the option to redeem, however, would be \$1000. The result of the transaction is therefore seen to be, that Government gives its notes—bonds—and agrees to pay interest thereon, in the sum of nearly \$56,000,000, and receives only \$50,000,000

in ready Money therefor. The foregoing propositions cover the ground and theory of both determinate and perpetual annuities which have so much prevailed in the funding schemes of Europe, as well as the American system. Illustrations of the former might be adduced, but the principles involved are not sufficiently obscure to provoke such a line of discussion.

A definition of what is known as a sinking fund finds an appropriate place in this connection. A sinking fund is raised by a transfer to commissioners, appointed for that purpose, of bonds or other obligations which Government has redeemed, upon which canceled securities such commissioners are paid regular interest by Government. The sum thus received by the commissioners is appropriated for the purchase of additional securities of Government, to be by them held for the same purpose as above indicated—namely, the collection of interest and the consequent augmentation of the original fund. In this way the amount of such a fund is regularly compounded.

Returning to the more immediate topic of discussion, a brief space will be devoted to tracing the more important eras of funding as found upon the pages of history. The system was inaugurated by the Italian states in the latter portion of the seventeenth century, and eagerly followed by Spain, whose financial condition, as stated in the first division of this chapter, was wretched in the extreme. France soon after availed herself of its apparent advantages, and was in turn followed by England, and subsequently by most of the principal powers of Europe. The dawn of the eighteenth century, in fact, witnessed the sale or mortgage of its expectations by nearly every kingdom of the Old World. The system found the initiative in France in the "farming of the revenues" hereinbefore explained. This led in 1661 to the first issue of perpetual annuities—to the plan of funding which only contemplates a payment

of interest, and puts the principal of a debt into the form of a perpetual loan. The idea found its origin in the fertile brain of Colbert, the astute and indomitable minister of Louis XIV. The excesses, wars and extravagances of his imperial master had flooded the kingdom with numerous species of unfunded obligations, and the public creditors were clamoring for redress. This unfunded indebtedness of France, moreover, consisted mostly of mortgages of particular sources of revenue, as already explained, which had been made at an enormous sacrifice; that is, the Government had sold the prospective proceeds of its assessments for sums far below what such assessments would realize. The situation was mastered by the French minister with almost more than the accustomed determination of purpose with which he is credited in history, and it is doubtful if a less resolute hand would have even proposed the scheme, much less put it into execution, without having been rewarded by a public demonstration in his favor at the *Place de la Concorde*, wherein he and a headsman would have proved the principal actors. Colbert imperatively demanded and compelled the public creditors to accept the proposal of Government to fund its outstanding debt in a perpetual loan, the par of which should be the actual sum which they had originally loaned the Government, and not the sum stamped upon the face of the outstanding obligations. The scheme, consequently, not only made a temporary loan a perpetual one, but denied the public creditors the profit which was promised them as measured by the difference between the sum they had paid the Government for its determinable securities and the amount which was promised on their face. The wily minister was loudly censured for breach of national honor, but only censured, and the scheme was carried to successful execution.

The process of funding was established in Great Britain

in much the same manner as upon the Continent. It first assumed the form of terminable annuities, as already explained, but since the revolution of 1688 and the accession of William of Orange the pecuniary liabilities of Great Britain have always been funded in a perpetual loan. The above-named monarch inaugurated the principle in the English realm, as Colbert had done in France nearly thirty years before him, except that the par of the perpetual annuities of this country is the sum stamped upon their face, and not that actually received by Government, which has always been considerably less than the face of the obligation. William III. inaugurated this system of funding the public debt of Great Britain in a perpetual loan in 1694, by chartering the Bank of England with a perpetual annuity of £80,000 in consideration of a loan to Government of £1,200,000. This measure of the new king, moreover, was immediately preceded by a repudiation of the public debt incurred by his predecessors, the Stuarts, and upon those contracted during his own reign the English people are still paying interest.

This examination of the nature and history of public debts and funding schemes, although necessarily brief, has been sufficiently extended to present a general and intelligible outline of the subject in the abstract preparatory to an investigation in the next succeeding chapter of the public debt and funding system of this country. A little additional comment will be made upon the general effects of funding, when the present chapter will be brought to a conclusion.

The system has always been enervating in its tendencies and prejudicial to the general welfare of community, except when conducted on the principle of making the Government securities into which a debt is funded terminable and not perpetual. In the first instance, the public consols will usually sell at a trivial discount, and thus avoid any

very material enhancement of the debt by the process of funding ; but in the second instance these securities have always been sold at an enormous sacrifice, and thus greatly augmented the amount of the original claim against Government. It is only by such a deduction from the face of these perpetual annuities of Government, indeed, that their sale can be effected. Capitalists will not invest their funds in a security the form of which can never be changed except upon payment of a heavy consideration, and this they receive by buying the perpetual consols of Government for a considerably smaller sum than their face, and consequently a sum considerably less than that upon which they receive interest. In this manner of funding by perpetual annuities a public debt becomes very materially increased beyond its original proportions. The public debt of Great Britain, for instance, by means of the establishment of these perpetual funds since the reign of Queen Anne, has been increased nearly one-third ; and thus the only consideration which the British Government has received for considerably over \$1,000,000,000 of its public consols has been the privilege of entailing a perpetual debt upon posterity, and the consequent assurance, as already explained, of a perpetuation of its peculiar form of government. This is not all. These perpetual annuities are but so many mortgages upon the wealth of the British people. They are supported by no security save the general credit of Government ; they constitute a lien—an incumbrance—upon all the private as well as public property of the realm, as already stated ; and if an attempt should be made for the payment of these perpetual annuities, the end could only be secured by an appropriation of private property through the exercise of the right of taxation.

The principle upon which a perpetual public indebtedness is based cannot but be perfectly apparent in the light of these indisputable facts. Such indebtedness has ever

prevailed in monarchical governments—seldom in republics and democracies. It has been fostered in the former instance in order to close the portals between monarchical and republican institutions. It has not found favor in the latter, because the world has as yet made no exploration into the science of government whereby it has found such effectual guarantees for individual liberty, personal security and right of property as are afforded in the scheme of a government by the people. And here, as already indicated in an earlier stage of this discussion, since no watchman in the form of a public debt is needed to cement the attachment of a republican population for their organic law—to hold them prisoners of policy against the dictation of natural desire—such indebtedness is not a national blessing, but an incumbrance upon the wealth and a damper upon the enterprise and virtue of community.

The system of funding outstanding obligations of Government into a perpetual public debt has received merited and scathing rebuke, by reason of its disadvantages, above enumerated and explained, from the most eminent jurists and political economists of both the Old and New World. William Blackstone pronounced upon it the curse of the finest legal intellect which has graced the jurisprudence of England; Adam Smith, after ten years of reflection and study thereon, declared it an anachronism and a reproach upon European and English politics; Ricardo reviewed it in terms of the most withering criticism; Hume, McCulloch and Mill reiterated the same condemnation; while in our own country Francis Bowen—who ranks with William Elder among the ablest writers upon public economics in either America or Europe—has added the weight of his powerful name and scholarly pen to the forces which have urged the inconsistency of the theory that “a national debt is a national blessing.”

CHAPTER V.

PUBLIC DEBT OF THE UNITED STATES.

THIS chapter, like the next preceding one, will be divided into two divisions. Division First will treat of the financial measures of Government whereby our present public debt was incurred, and Division Second will be devoted to an examination of such measures whereby this indebtedness has been, and is proposed to be, funded.

DIVISION FIRST.

The Public Debt prior to the Late War—The first Financial Measures of Government at its Outbreak—They show an utter Inappreciation of the Character of the Conflict—The General Policy in this respect fully stated—The various Evidences of Indebtedness, and the acts which authorized them, examined—The evils of the Financial War Policy were Short Loans—Loans in the form of Money—The various Funding Acts stated and explained—The Operations of the “Syndicate” examined—Wholly Illegal—Its Results—A Failure—Why the Debt should be Paid—How the United States differ from Great Britain in this respect.

ON the first day of July, 1861, nearly three months subsequent to the inauguration of our late civil war, the public debt of the United States was a little in excess of \$90,000,000—about one-thirtieth of its amount July 1, 1866, and twenty-seven times less than at the close of the year 1871. The nucleus of this indebtedness arose from the assumption by the General Government, in 1790, of the pecuniary liabilities incurred by both the Confederate and State Governments during the war of the Revolution. These amounted to \$54,000,000 and \$25,000,000 respectively. The second struggle with Great Britain, in 1812, added \$35,000,000 to the indebtedness already in

existence, and the Mexican war in 1845, including the sum paid for the cession of Texas, California and New Mexico, and the indemnity allowed to American citizens who had claims against the Mexican Government, placed the country under additional war-bonds to the extent of \$170,000,000. By the Compromise of 1850, moreover, an indemnity was granted to Texas for all claims against the Government arising out of the annexation of that State as the cause of the Mexican struggle, in the sum of \$10,000,000; and a further pecuniary liability of about \$1,000,000 was incurred by the suppression of Indian hostilities in Oregon in 1856. In pursuance of a policy, however, adopted by Congress at the close of Madison's second administration, the aggregate indebtedness of the Federal Government at the commencement of the last decade had been reduced to the amount stated in the outset.

The absolute inappreciation by Government of the probable extent of the struggle precipitated by the fire upon Sumter was no less evidenced in its first call for troops to resist the onslaught than in the character of its financial policy immediately subsequent to the opening of hostilities. The principle upon which the authorities at Washington seem to have acted in this connection was that, as the conflict already inaugurated would be confined within narrow limits, both as to time and territorial area, neither large pecuniary resources nor long-deferred loans would be required for its prosecution. The major premise was an error of conception hardly excusable in face of the fact, known to every observer of our political affairs, that the South had been constantly organizing its forces, both moral and material, since the Compromise of 1850, for the war of secession of 1861. The deduction made from the main proposition was, of course, erroneous in point of fact, but in direct pursuance of what may now be considered the established American principle, that the United States propose

to be a debtor no longer than compelled by the force of existing circumstances.

It is both unnecessary and impracticable to give a detailed account of the separate acts of legislation by which our present indebtedness was authorized, or a complete and separate statement of the various evidences of the same which were issued and negotiated by our Department of Finance. The latter will sufficiently appear, for all practical purposes, at the conclusion of this chapter, and the former will soon receive as extended comment as the restricted limits of this treatise will permit, giving a brief and separate history of the same for each year during the war, and deferring a discussion of the feasibility of said measures until such narrative shall be concluded. There will be no intentional omission of any important particular.

The governmental belief in a short war resulted in the induction of financial measures already foreshadowed, which consisted in the issue of Federal obligations of small amounts, with the period of maturity not long deferred. Another feature of the financial policy of Government during the earlier part of the war was to issue its evidences of indebtedness in the form of Money or currency—that is, legal-tender or Treasury notes—with a provision for their conversion into interest-bearing bonds. The principle upon which this action was based contemplated a supply of an alleged need of an increased volume of circulating medium. In some respects this measure was a wise, and in others a very impolitic, expedient, as already shown in a prior chapter of this treatise.

The policy indicated in the preceding paragraphs first found expression in the acts of July 17 and August 5, 1861. These acts authorized an issue of demand and Treasury notes and interest-bearing bonds. The demand notes run without interest, and amounted to \$60,000,000. The Treasury notes bore annual interest at the rate of seven and

three-tenths per cent., had three years to run and reached the sum of \$140,000,000. The bonds had twenty years to run, bore interest at the rate of six per cent. per annum, and were issued to the extent of \$189,000,000. The Treasury notes above named were convertible into these bonds, and were entirely absorbed by these securities, with the exception of \$23,000,000 still outstanding (at the close of the year 1871). It is thus seen that for the opening year of a war which cost the United States, upon an average, over \$700,000,000 per annum, and a year which, by reason of the necessity of a creation of an army and navy *in toto*, demanded an enormous financial resource, provision was made for the support of Government in prosecution of the struggle only to the extent of about \$380,000,000.

The acts of February 25, March 1, March 17, July 11 and 17, 1862, give a further expression of the financial policy of Government in reference to the public debt, and show a more accurate appreciation of the magnitude of the task it was called upon to perform, but not of the proper financial measures requisite therefor. The first of these acts authorized an issue of interest-bearing bonds, legal-tender notes and temporary loan deposits; the second, an issue of certificates of indebtedness; the third, an additional issue of temporary loan deposits above named; the fourth, an additional issue of this same temporary loan and legal-tenders; and the fifth, an issue of postal—afterward changed to fractional—currency. The bonds bore interest at the rate of six per cent. per annum, had twenty years to run, with an option of Government to redeem at any time after the expiration of five years from their date, and were issued to the extent of \$515,000,000. The legal-tender notes were payable on demand, without interest, convertible into bonds of the above character—which last provision has been since repealed—and with those issued by the act of March 3, 1863 (anticipating our narrative to this extent), amounted

to \$357,500,000. The temporary loan deposits bore interest at the rate of four, five and six per cent. per annum, were payable at any time after ten days' notice, and reached the sum of \$150,000,000. The certificates of indebtedness had one year to run, bore interest at the rate of six per cent. per annum, and were issued to the amount of about \$562,000,000. The postal—afterward changed to fractional—currency by the act of March 3, 1863, was payable on presentation, redeemable in United States notes, and amounted to \$50,000,000.

The financial policy of 1863 is indicated by the act of March 3d of that year, which authorized an issue of interest-bearing bonds, Treasury notes, coin certificates and compound-interest notes. The bonds bore interest at the rate of six per cent. per annum, were redeemable in not less than ten nor more than forty years from date, principal and interest payable in coin, and were issued to the extent of \$75,000,000. Although the interest on all bonds of preceding issues was made payable in coin, the issue of this act was the first whereby the principal, by direct words of the statute—by the letter of the law—was declared redeemable in specie. The Treasury notes had one and two years to run, bore interest at the rate of five per cent. per annum, and were issued in various sums, and are now outstanding to the amount of about \$200,000. The coin certificates were issued for deposits of coin or bullion with the Treasury, were payable on demand, without interest, and reached the sum of \$443,000,000. The compound-interest notes had three years to run, bore compound interest at the rate of six per cent. per annum, were a legal tender, and were issued to the amount of about \$217,000,000.

In 1864 our public debt still continued to be increased by the acts of March 3, June 30 and July 1 of that year, which authorized the issue of interest-bearing bonds and Treasury notes. The bonds were redeemable, part in not less than five nor more than twenty, and part in not less

than ten nor more than forty years. The former bore interest at the rate of six per cent. per annum, and were issued to the extent of about \$130,000,000; while the latter, bearing the same rate of interest, reached the sum of \$196,000,000. Both of these were payable, principal and interest, in coin. The Treasury notes had three years to run, bore interest at the rate of seven and three-tenths per cent., and reached the amount of nearly \$830,000,000.

The accumulation of our present public debt ceased with the issues of the various evidences of indebtedness under the respective acts above described. The subsequent financial measures of Government are funding ones, and will find appropriate consideration in the second division of this chapter. The feasibility of the measures herein before narrated will now receive attention.

The policy of Government, induced by a belief in a short war, which led to the negotiation of short loans, and these, to a great extent, in the form of Money or currency—that is, either legal-tender or Treasury notes—resulted in two evils—one of a comparatively superficial, the other of a very material, character. The first was not only a disturber of public convenience, but, to a certain degree, a traducer of public credit. The second was the uncompromising foe of nearly every individual interest and the material prosperity of nearly every class or portion of community. By pursuance of the plan which deferred the maturity of Government obligations for only a short period, the Administration was constantly annoyed and embarrassed by the return of its bills of credit, demanding compliance with the letter of the bond, and this at times when even the existence of the Government was in absolute jeopardy. Thus, the certificates of indebtedness of March 1, 1862, had only one year to run. The consequence was, that in the autumn of 1863—a period which was, in many respects, so to speak, the very midnight of the nation's struggle for

life—nearly \$400,000,000 of these certificates knocked at the door of the national Treasury and sought redemption from its already depleted coffers. So again in the autumn of 1864—a period when the ill-fated army of the Potomac was struggling through the marshes and swamps of Virginia, *en route* for Richmond, with one hundred thousand of its brave boys locked in the embrace of death—\$140,000,000 of three-year Treasury notes, issued under the act of July 17, 1861, imperatively claimed conversion into the “lawful money” for which the nation’s faith was unqualifiedly and absolutely pledged. Further instances might be adduced, but such a course is quite unnecessary. These rapidly-maturing loans forced the authorities at Washington to frequent and various expedients, not to say makeshifts—and yet that is the only proper term for much of the financial legislation of the war—in their attempt to preserve the national credit and abide by the Government’s contracts with its creditors. Such forced and immature legislation, indeed, could not be expected to be either wise or judicious. The National banking system is about the only wholesome measure of financial legislation during the war, and this, as already noticed, has grave defects. A very striking illustration of such unadvised action is found in connection with our legal-tender notes and fractional currency. The act of July 11, 1862, authorized an issue of \$150,000,000 of legal-tenders in addition to a like amount already in circulation, prohibiting a denomination of the same of less than one dollar. The issue, of course, so inflated the currency—prospectively, it is true—that specie immediately sought the fellowship of Money-hoarders, and the country was left, comparatively speaking, without a dollar of “small change” for the petty uses of daily life. The consequence was, that in six days after its prohibition of paper currency in sums less than one dollar, Congress authorized an issue of \$50,000,000 of the same to take the place of

the specie which its action of a week before had driven from circulation.

The second evil of the war-policy of Government in this connection was the negotiation of many of its largest loans in the form of Money, and thereby greatly augmenting the volume of our circulating medium. The evil effects of such a course have been already discussed in the consideration of abstract principles in preceding chapters. A brief examination of those which resulted from the policy above named will now be made. A mere allusion to this topic is all that is necessary, as it has been fully examined in the second chapter of this treatise. Almost the sole idea which Congress and the Administration seem to have acted upon was, that Money, currency, circulating medium of some sort, constituted the chief requisite for prosecuting the war. In pursuance of this idea, as already seen in the chapter last above named, the circulating medium of the loyal section of the country was swelled from less than \$300,000,000 to at one time \$900,000,000. This action resulted in leaving paper Money the sole measure of value and medium of exchange, and, in accordance with the law of scarcity and excess, explained in the chapter just mentioned, the prices of all commodities advanced in a direct ratio with the increase in the volume of paper Money. The Government did not need this vast amount of paper Money, of circulating medium, although at first thought it may seem otherwise. Its proper course was to have issued its bonds for a long period, put them upon the market and sold them to the highest bidder. Instead of this, the act of February 25, 1863, directed that the bonds of Government must be sold at par, and excessive issues of paper Money were resorted to to supply the needs of Government. Two objections will be here raised to the above statement as to sale of bonds. The first, that there would have been no Money to have purchased them with; the second, that they would have

sold at a great sacrifice, and so very materially enhanced our present indebtedness. The first objection will not stand for a moment. Our bonds found a market, and a very extended one, in Europe, beside those taken by our own population. If they had been offered to the highest bidder, thus putting them in competition with other securities, capital from every foreign Money-market would have sought their possession as soon as they undersold other means of investment. The statement is apropos in this connection that it is an advantage, instead of a disadvantage, if our securities are held by foreign capitalists, for the reason that it leaves our home capital in the exclusive service of productive industries. The second objection is only seemingly sound. Our present indebtedness would not have been unduly augmented by selling bonds forty per cent. below par in gold any more than it was unnecessarily extended by selling them for paper Money, the value of which was depreciated forty per cent. or more. What is the difference between having sixty cents in specie and one dollar in paper Money, when the *exchangeable* value of each is the same? The Government wanted Money to buy supplies and ammunition and pay its army and navy; and so long as sixty cents in specie would have gone as far in this direction as one dollar in currency, it would have taken no more bonds, sold below par in specie, to effect this purpose than it did, sold at par in currency, to accomplish the same end. The question is here asked, "What is the difference between the two schemes when they both eventuate in the same result?" The difference in the first place is, that in consequence of Government having negotiated its loans in excessive issues of paper Money and the sale of bonds in currency at par, the price of commodities was enhanced one hundred per cent. and more, and the business of the country so far removed from a specie basis that seven years have not sufficed to effect a return to the same. This is

not all. The laboring classes of community suffered unaccountable privation by this policy. Their wages and salaries never increased in more than one-half the ratio with the advance in the cost of living expenses, as explained in the second chapter, already referred to. None of these resulting circumstances would have occurred under the opposite course, as above mentioned, to any great extent. In the absence of a material inflation of the circulating medium, prices of commodities would have been augmented only in accordance with the law of supply and demand, specie payments would not have been far removed, though probably suspended, and our laboring population would have been protected from untold and inappreciable misery and want.

These two elements of the financial policy of Government, whereby our public debt was incurred, constituted the fundamental defects of the entire system. There is much to be said in extenuation of the legislation above criticised, it is true. The exigencies which induced it were almost overwhelming, not to say distracting, but an impartial examination of the matter could not offer for it the excuse of silence.

Comment upon the policy of payment of our public debt, and the schemes which have been suggested for so doing, would be logically appropriate in this connection. The same, however, is deferred, as a fitting conclusion not only of this chapter, but of the portion of this treatise which has been devoted to "Monetary and Financial Topics."

DIVISION SECOND.

A consideration of the legislation by which the public debt has been and is proposed to be funded will now engage attention. The first funding act after the precipita-

tion of the late civil war bears date February 25, 1862. This act provided for the issue and sale of what are known as five-twenty bonds, and permitted the conversion of the Treasury notes and certificates of indebtedness of the previous year into the same. This act, moreover, made provision for a sinking fund as follows, namely: all duties on imports to be collected in coin or other lawful Money, and the coin so collected to be set apart as a special fund for the following purposes: "First. To the payment in coin of the interest on the bonds and notes of the United States. Second. To the purchase or payment of one per centum of the entire debt of the United States, to be made within each fiscal year after the first day of July, 1862, which is to be set apart as a sinking fund, and the interest of which shall in like manner be applied to the purchase or payment of the public debt, as the Secretary of the Treasury shall from time to time direct." This provision, although modified in form by the funding act of July 14, 1870, is still intact in substance and of binding force upon Government.

The next funding acts are those of March 3, 1865, and April 12, 1866, which are construed together. They authorize an issue of five-twenty bonds as before described, bearing interest at six per cent. per annum, for the purpose of absorbing, by way of exchange, any and all outstanding obligations of Government except the legal-tender notes; these, by the original act which authorized their emission, were convertible into bonds of the above description, but that provision, as before stated, was subsequently repealed. These funding acts have all since been merged, so to speak, in those of July 14, 1870, and January 20, 1871. This last is amendatory of the first, and the leading provisions of the funding scheme evolved by these combined statutes are as follows: \$1,500,000,000 of interest-bearing bonds, principal and interest payable in coin, are to be issued in

denominations of fifty dollars or some multiple thereof for the sole purpose of redeeming the five-twenty bonds outstanding at the date of the passage of the act first above named. Of this sum, \$500,000,000 may bear interest at five per cent. per annum, and be redeemable at pleasure of Government "after ten years from the date of their issue." The remaining \$1,000,000,000 authorized by these acts may bear interest at four and a half and four per cent. per annum, and be redeemable at pleasure of Government "after fifteen and thirty years from their issue," respectively. Construing the above-named acts together, the limit of the four and a half per cent. bonds is \$300,000,000, and that of the four per cents., consequently, \$700,000,000. These bonds must be sold at par in coin, are exempt from every form of taxation, and a sum not exceeding one-half of one per cent. of the amount issued is appropriated to pay the expense of preparing, issuing, advertising and disposing of the same. The public debt is not to be increased by any action under these acts, and whenever any of the five-twenty bonds outstanding at the date of the passage of the act first above named are to be redeemed, three months' notice of the same must be given, designating the bonds by numbers, and interest on such bonds shall not cease until the expiration of the three months as aforesaid.

In pursuance of this funding scheme, the Secretary of the Treasury, on the 28th of February, 1871, gave notice that on the 6th of March following books would be opened for subscription to the five per cent. bonds to the extent of \$200,000,000. On the first of August next succeeding such subscriptions amounted to \$65,075,550. This sum had mostly been subscribed by the National banks, and the subscriptions at the date above named, moreover, had entirely ceased. On the first of September, 1871, the Secretary of the Treasury, by virtue of authority conferred by the acts already cited, gave notice that certain five-

twenty bonds of the issue of 1862, designating the same by numbers, bearing interest at six per cent. per annum, to the amount of \$100,000,000, would be paid on December 1st of the same year, and that interest on the same would cease on that day.

It will be remembered that on August 1st of the same year (1871) the demand for the new five per cent. bonds had ceased. The Secretary of the Treasury, in his commendable zeal to make the new funding loan a success, in the early part of the said August entered into an agreement, through the agency of Jay Cooke & Co., with certain English and American bankers, who were christened by some one "The Syndicate" (but by whom history has thus far failed to determine, Secretary Boutwell having denied that the title was conferred by him), whereby these bankers should take the portion of the \$200,000,000 of the five per cent. bonds still unsold—namely, about \$130,000,000—subject, however, to certain conditions. The terms of this agreement, using Secretary's Boutwell's own words, were as follows—namely: "The parties represented by Messrs. Jay Cooke & Co. had the right to subscribe for the remainder of the two hundred millions of said bonds by giving notice thereof at any time previous to the first of April next, and by subscribing for ten millions at once, and for an average of at least five millions of bonds per month during the intervening time, subject to the right of the National banks to subscribe for fifty millions of dollars within sixty days from the 25th day of August." "It was also agreed that the subscriptions should be made through National banks, and certificates of deposit therefor issued by said banks to the Secretary of the Treasury, bonds to be lodged with the Treasurer of the United States for the amount of the deposit."

A circular was also issued August 10, 1871, from the Treasury Department, quoting again from Secretary Bout-

well, whereof the tenor was as follows: "It was announced that National banks making or obtaining subscriptions payable in coin would be designated by the Secretary of the Treasury as depositaries of public Money, on the usual condition of placing in the hands of the Treasurer of the United States bonds of the United States for the security of such deposits; and that at the commencement of each month notice would be given of the redemption of an amount of bonds equal to the amount of subscriptions in coin for the preceding month, interest to cease in ninety days from the date of such notice.

"It was also stated in the circular that as the bonds called should mature the deposits would be drawn from the several banks proportionately.

"It was further agreed that the subscribers to the loan should receive as commissions whatever might remain of the half of one per cent. allowed by law upon the two hundred millions, after paying the cost of paper for the bonds, for engraving, printing, advertising, delivery, and all other expenses of the same."

Upon this basis the remaining \$130,000,000 of the five per cent. bonds were subscribed for by the Syndicate before the close of the same month (August, 1871) in which the agreement was made, with an accruing advantage allowed the Syndicate, however, whereby it was paid an extra commission of a little over \$1,625,000, and the letter certainly, if not the spirit, of the funding act directly violated. The \$130,000,000 of bonds subscribed for by the Syndicate were not to be delivered until the expiration of three months from the date of subscription, but they were considered as sold and drawing interest during this period; so that the Syndicate realized by the transaction a sum equal to the interest of \$130,000,000 for three months, which amounts to a little more than \$1,625,000, as already stated. The practical working of the arrangement was simply this:

“The Syndicate certified to the Treasury that they had deposited with themselves coin for the purchase of the new bonds; they forward to the Treasury a like amount of old five-twenties as security for the deposit; the new bonds are at once placed to their credit; at the end of ninety days the five-twenties are canceled, they receive the three months’ interest that has accrued upon them, and at the same time get their new bonds, upon which three months’ interest has also accrued.”

The letter of the funding statute was violated by this proceeding in that this act positively prohibits any action thereunder whereby the public debt shall be increased, and by the foregoing arrangement, in pursuance of which \$130,000,000 of bonds were placed to the credit of the Syndicate three months before delivery of the same, for the purpose of drawing interest, the public debt was increased in the sum and for the period named. The following is Secretary Boutwell’s excuse for the proceeding: “The act authorizing the refunding of the national debt directed the Secretary of the Treasury to give three months’ notice of the payment of any bonds which in such notice might be specified and called for payment. In the same act it was provided that the Money received for the new bonds should be used only in payment of bonds outstanding, known as five-twenty bonds. The statute proceeded upon the idea that the holders of five-twenty bonds should have three months’ interest upon their bonds after notice should be given by the Government.

“As this notice could be given safely only upon subscriptions already made or secured, the general necessary result, even in case the Money were paid into and held in the Treasury of the United States, would be a loss of interest for three months.

“On the 1st of August last the demand for the new bonds had nearly ceased, but by the agreement referred to

the necessary loss to the Government incident to the re-funding of the public debt was made the means of securing subscriptions to the amount of about one hundred and thirty millions of dollars.

“The banks, or those represented by the banks, derived an advantage in the use of the amount of their subscriptions for three months, but this without other loss to the Government than what was incident to the negotiation of the loan under the law.”

That is, since by the funding act the Secretary of the Treasury is obliged to give three months' notice to holders of the old six per cent. five-twenty bonds of his intention to buy in the same before the interest thereon will cease, he could not have used the \$130,000,000 due from the Syndicate if it had been paid at the time of its subscription for the new bonds until the expiration of the three months aforesaid, as the funding act forbids the appropriation of moneys derived from the sale of the new bonds to any purpose save the redemption of the old five-twenties; therefore the Syndicate may properly have the use of the \$130,000,000 for the three months in which their possession would have been of no avail to the Government. The Secretary, moreover, defends himself with the plea that the interest on \$130,000,000 of the public debt was reduced from six to five per cent. by the operation.

Materially speaking, the transaction with the Syndicate resulted in no loss to Government whatever, but it was a transaction nevertheless, although conceived and executed with the most honorable and upright intention on the part of the Secretary, in direct violation of a law of the United States, and tends to the establishment of a precedent which in less honorable hands might result not merely in a disregard of the authority of Congress, but in a total destruction of even Government itself. The creation of law is the province of legislation; its execution devolves upon the

executive ; but *construction* thereof is the office of legal tribunals. It is here that Secretary Boutwell has erred. He has arrogated to himself the exercise of a judicial prerogative when he is possessed of mere executive power. If the door is opened for such executive usurpation, where shall we stop? Who shall draw the line beyond which executive power shall not rebel? What are the exigencies which shall excuse such transgression? By what rule or principle are such exigencies to be determined? The situation is pregnant with evils of the gravest import. Speaking in the abstract, this simple defiance of law was the parent of the recent rebellion, which has consigned a million of men to premature death, and entailed upon Government the debt of \$3,000,000,000 which Secretary Boutwell has been so persistently endeavoring to cancel. The country has had full enough of what may well be termed lay construction—of self-constituted tribunals; and it behooves executive authority to keep within the limits prescribed for it by our organic law, as it does the department of legislation to refrain from supplanting civil government with military force. This thought will be pursued at length in the second part of this treatise. Further comment thereon in this connection would be illogical and improper.

The result of the funding scheme of 1870 is thus seen to be the conversion of \$200,000,000 of old six per cent. five-twenty bonds into the five per cent. securities authorized thereunder, and this upon payment of a sum of \$1,625,000 in excess of the provision allowed by Congress therefor. This is not all. The remainder of the new loan will not, in all probability, be placed except at a similar additional and proportionate expense. The only real inducement held out by the present funding act to holders of the old six per cent. five-twenties to exchange the same for the new five per cents. is, that the principal of the latter is, by the letter of the statute, payable in coin, while with the former such

is not the case. Faith in the sacredness of Government's purpose to pay the entire debt in coin, however, as pledged by the act of March 18, 1869, militates against the probability of capitalists changing their six for five per cent. securities upon their own volition. It is a violation of common sense and reason to suppose otherwise. The commission allowed by Congress, moreover, for the absolute sale of the new five per cents. is too meagre to induce capitalists to negotiate the loan, and thereby put the Treasury in funds for the purchase of the old five-twenties in accordance with the optional right it has so to do. The funding acts of 1870, therefore, in the light of experience, cannot be regarded as a success, and they will require material modification before the outstanding debt can be absorbed by issues thereunder, unless some such unwarranted expedient as the Syndicate of August, 1871, is again resorted to.

This discussion will be dismissed with a brief comment upon the feasibility and necessity of an immediate payment of the public debt, principal and interest, in coin. This comment, indeed, will be of the closest possible character, as the subject, in the abstract, was fully considered in the next preceding chapter.

It will be remembered that the old six per cent. five-twenty bonds issued under the act of February 25, 1862, are not, by the strict letter of the statute, payable in specie, although it has been generally conceded that such was the intention of the legislators. The statutes subsequent to the one above named, whereby the amount of the public debt was increased by issues of bonds thereunder, although inexcusably and culpably loose in their phraseology, have been, in a *quasi* manner, construed to pledge the faith of Government for the payment of such bonds, principal and interest, in coin. The absence of an express provision to that effect, however, in the act of February 25, 1862, whereunder over \$500,000,000 of five-twenties were issued,

has given rise to extended discussion as to the propriety of paying such five-twenties in legal-tender notes instead of specie. A full history of this discussion will not be essayed, as its details are familiar to every intelligent citizen. It has ceased to engage public attention, and the scheme is buried in the oblivion to which its treacherous and perfidious character justly consigned it. It was a mere exponent of political capital, a part of the stock-in-trade of politicians who had personal ends to serve, and as such was originated by George H. Pendleton, and subsequently indorsed, in its cardinal features, by B. F. Butler, Oliver P. Morton and John Sherman. This "greenback swindle," as it has been justly termed, depressed the value of our securities and injured the public credit to such an extent that Congress, March 18, 1869, passed an act for the sole and express purpose of barring further agitation of the subject, whereby the faith of the United States is pledged for the payment of the entire public debt in coin, except in cases of obligations issued under acts which distinctly provide for payment of the same in other Money besides specie. The funding act of 1870, moreover, directs that the new loan into which the old five-twenty bonds are convertible shall be paid, principal and interest, in coin.

That a national debt is not a national blessing, so far as the interests of this country, at least, are concerned, was strenuously maintained in the last chapter. That our present public debt, contracted in the main during our late civil war, could not, for certain reasons, have been canceled as it was incurred, was also demonstrated in that connection. Comment upon these two points, therefore, is here unnecessary. The principal reasons for the immediate extinguishment of the public debt are found in the possibility of future war and the necessary maintenance of public credit. This end should be persistently sought with all the rapidity consistent with a non-imposition of a too heavy

burden of taxation upon the people. What this measure of taxation should be will be discussed in the chapter devoted to that subject in Part III. of this treatise. Secretary Boutwell, in his report for 1871—the most admirably-arranged report, by the way, which ever emanated from our Department of Finance—gives expression to the sentiment of the great majority of the people upon this subject in the following words: “In my annual report to Congress for 1870 I expressed the opinion that the settled policy of the country should contemplate a revenue sufficient to meet the ordinary expenses of the Government, pay the interest on the public debt, and from twenty-five to fifty millions of dollars of the principal annually. To that opinion I adhere, with even a stronger conviction that the payment annually upon the principal of the public debt should not be less than fifty millions of dollars.

“Large as the revenues of the country have been during the last three years, our system of taxation has not been oppressive to individuals, nor has it in any sensible degree embarrassed the business of the country; and while relief from taxation is desirable, it is yet more desirable to maintain the public credit in its present elevated position, not only as an example to other nations, but for its historical value in enabling the Government to make loans for large amounts upon favorable terms if, unhappily, in the future an exigency should require such loans to be made.”

The Secretary is correct. At the close of Madison's second administration Congress adopted a policy for the reduction of the public debt which had been incurred in the wars of the Revolution and 1812, which contemplated its payment in installments of \$10,000,000 annually. The country at that period, in view of its comparative extent of population and material resource, was not so well able to bear the burden imposed upon it as it now is that suggested by the Secretary in his report above mentioned.

The public debt during the fiscal year ending June 30, 1871, was reduced in the sum of \$94,327,764.84, and from the incoming of Grant's administration to January 1, 1872, \$281,624,848.87. The gross amount of the same at the time last above named, moreover, less the cash in the Treasury, was \$2,243,838,411.14.

The discussion of "Monetary and Financial Topics," and thereby Part I. of this treatise, is here concluded.

PART II.

EXISTING AND PROPOSED CHANGES IN OUR ORGANIC AND MUNICIPAL LAW.

INDUCTIVE.

IN passing from the consideration of the subjects which have thus far engaged attention to those into which the above-written title naturally resolves itself, the door is opened to an entirely different and far more fascinating field of inquiry. The entire theme of political science, indeed, offers very little inducement to the mere pleasure-seeking mind, but that portion of it enclosed within the boundaries of Money and Finance is particularly uninviting for purposes of mental recreation. Its pathways are skirted with no flowers of imagination wherewith a playful intellect may satiate its love for a life of ceaseless imagery; neither do they lead through occasional fields of fancy, wherein a vacillating spirit may here and there throw off the harness of dull investigation and regale itself with painting pictures of thought upon the canvas of ideality. They proffer entertainment to no one but the mere lover of absolute science, close their gates upon all save the tireless student in quest of knowledge and truth, and verify, in the mind which has acquainted itself with all their surroundings, the force of the aphorism of Epicharmus, that "the gods sell us everything for toil."

Turning to that portion of political science, however, designated by the boundaries of Organic and Municipal Law, we stand upon the threshold of one of the grandest domains of reason and of thought. The study of matter is here abandoned for the study of man. Search is here made for the springs of human action, the agencies whereby these silent forces may be influenced, and the proper channels wherein they shall be directed. In short, the theme is Government; and this, in the abstract, receives an ample definition in the next preceding sentence, for all government consists, first, in an acquaintance with human motive; second, a knowledge of the means whereby such motive may be influenced; and third, the perfection of proper measures for the guidance thereof. It is a task, indeed, in which man is a coadjutor of God, and one that shall absorb his attention both for time and eternity. By it he seeks to obey the mandate of Omnipotence which attaches to all conditions of human existence—"Know thyself!" And as God, "in the beginning," established a fundamental law of Nature to which all His minor ordinances for the regulation of the material world are subservient, so in every epoch of civilization has man essayed the structure of human government by framing one fundamental, organic law, whereon, guided by its principles, he has reared the superstructure of a municipal code.

By the terms Organic and Municipal Law, therefore, which appear in the title by which the present part of this treatise is designated, are intended, in the first instance, constitutional law, and in the second the immense volume of statute law enacted and promulgated from time to time for the more immediate government of mankind. The first binds the legislature—the state—the supreme power, in its office of legislation, while the second bears alone upon individuals. The first is a rule whereby the people, in

their sovereign capacity, create the second, and the second is a rule by which the people, in their several conditions, are bound to govern their individual acts.

The topics, therefore, which will now demand consideration, although the offshoots of abstract principles of science, are pregnant with truths of the most engrossing interest and rich in their rewards of careful and studious investigation. An acquaintance with the science of government, as already intimated, is, to a certain extent, indissolubly linked with a knowledge of the science of thought; and the grandeur of the theme is by no means exaggerated in the matchless apophthegm of Phavorinus, "On earth there is nothing great but man; in man there is nothing great but mind." The branch of political science, however, upon which, in the proposed discussion, we are about to enter, like the one we have just dismissed, presents neither a playground for the imagination nor a retreat for the lover of dreamland. Its principles and truths are not scattered upon the surface of the field of thought, but, like the richest veins of mineral wealth, lie deeply hidden from the superficial gaze, and are discernible only in the clear white light of intelligent reason. The investigation of these truths is a difficult yet captivating task; and to every citizen of our common country what more interesting or imperative duty than that of sincerely and persistently endeavoring to comprehend the causes, necessities, character and reason of the changes in an organic and municipal code whereunder the American republic is either advancing to the position of the most colossal nation upon which the sun has ever shone, or else hastening to a national overthrow more disastrous and insurmountable than any which has draped the pages of history since the downfall of the Roman empire? Familiarity with these truths, indeed, on the part of the American people, as elements of theoretical

science and their practical application as an art, constitutes the sole instrumentality whereby we are to prove the ability of man for self-government.

In the discussion of organic and municipal law in the abstract, the former is entitled to precedence, both by reason of its prior creation and a due regard for logical propriety. In examining the existing and proposed changes in the organic and municipal law of the United States, therefore, the line of argument naturally follows in the same channel.

The topics into which the title of the present part of this treatise regularly resolves itself have been already stated in the introductory remarks thereof—namely, The Constitutional Amendments, Reconstruction, Amnesty, Force Legislation and Civil Service. These will constitute the subjects of separate and distinct chapters. By the title with which the first chapter is designated reference is only had to the Thirteenth, Fourteenth and Fifteenth amendments to our national Constitution. It may seem a too general title for subject-matter restricted within such comparatively narrow limits, and yet it is consistent with the more general one which has been given to the entire treatise; for, so far as constitutional changes are concerned, the present issues of American politics have their origin solely in the amendments above named. The prior ones, moreover, have not only been made matters of historical record, but been submitted to exhaustive discussion as to their character, legality and bearings upon the public weal. It may also seem suicidal to rules of logic to sever the constitutional amendments from the general subject of Reconstruction with which the second chapter is entitled. These amendments, it is true, are an integral part of the general reconstruction of our Government subsequent to the late civil war, but they are measures of reconstruction, however,

aimed at the Constitution of the United States, while the remaining ones simply contemplate changes in our municipal code. Their separate consideration is therefore not only proper, but more conducive to a clear understanding of the same. The main inquiry will now be proceeded with.

CHAPTER I.

THE CONSTITUTIONAL AMENDMENTS.

The Importance of the Topic—The Thirteenth Amendment—The First Fruit of the Rebellion—Indications of the Purpose of the North to Exterminate Slavery—The Confiscation Acts and the Emancipation Proclamations the foundation of the Amendment—The Origin of the Amendment—The Manner and Legality of its Adoption—The Question discussed at length—The Legality of its Ratification by the States—The Status of the States assuming to Ratify—President Lincoln and Reconstruction—President Johnson and Reconstruction—The Constitutionality of the Amendment—The same examined at length—Minor Collateral Questions—Presidents Lincoln and Johnson's courses on Reconstruction compared—The same defended—The Effect of the Amendment—The Fourteenth Amendment—Introductory Comment—The Incompleteness of the Scheme—Its Origin due to both Political and Moral Causes—The Ends sought by the Change--The History and Legality of both the Congressional Vote proposing the Amendment and its Ratification by the States—The Status of the States assuming to Ratify—The Question of Suffrage—The Constitutionality of the Scheme—Citizenship—The Amendment analyzed—Distinction between Civil and Political Rights and Privileges—The Resulting Effect of the Amendment—Monopolies—The Rights of Corporations and Franchises under the Amendment—The case of the New Orleans Slaughter-house Company—The Full Effect of the Amendment stated—The Fifteenth Amendment—Its Cause and Origin—The Enfranchisement of the Blacks—The Legality of its Ratification—The Status of the States assuming to Ratify—The Right of a State to withdraw its Assent considered—The Constitutionality of the Amendment—Discussed at length—The Extent of the Power of Amendment—The Results of the Amendment fully defined—Woman Suffrage under the Amendments—The alleged Merits of the Fourteenth and Fifteenth Amendments criticised in detail—Deduction from the Criticism—The Case of the Blacks—Concluding Comment.

THE assumption must not be made in the outset of this discussion that it will be conducted in detail as to

every phase of the subject presented for investigation. Such a course for the purposes of this treatise is absolutely impossible, for each of the amendments hereinbefore named in that respect furnishes ample material for an entire volume. Properly speaking, the question presents itself in five different aspects—namely, the cause and origin of these amendments; the history and legality of their adoption; the purposes they were intended to serve; their constitutionality; and their resulting effect upon the public, with a criticism of their merits. Search for an appropriate place wherein this naturally-suggested line of discussion may be curtailed is attended with great difficulty and embarrassment, for every feature thereof, to every lover of political science at least, is so fascinating in its character that it seems almost a sacrilege to refuse it an acquaintance. The moral causes wherein these amendments are rooted were the growth of five hundred years of civilization and Christianity; the period of their creation is laid in one of the most important epochs of the world's progress; and the history thereof is a narrative of grave and ingenious legislation. The purposes they are intended to serve are linked with the future destinies of the universe; their constitutionality furnishes a most captivating theme of discussion; while their resulting effect upon the national welfare is massing itself into a reservoir of facts from which moral forces are marshaling that will tell with tremendous import not only upon the future of this republic, but upon the science of government, the cause of civilization and the advancement of Christianity throughout the length and breadth of the entire globe.

An intendment will be made to scan the whole of this colossal subject, and no important particular will be intentionally omitted. Of these amendments separately and chronologically.

THE THIRTEENTH AMENDMENT.

The Thirteenth amendment to our Constitution is an embodiment of public sentiment germinated upon the ruins of Sumter in the spring of 1861, and crystallized into an article of organic law in the winter of 1865. It is the exponent of a principle, it is true, for the national recognition of which a small and respectable yet indiscreet and impolitic organization had incessantly striven from a period as remote as the autumn of 1833. The tenets of this organization, however, in no respect were ever indorsed by anything but what seemed a hopeless minority, at the North even, until after the opening of hostilities, at which time the main principle of its creed, though not its minor doctrines, soon developed itself into the prime issue of the conflict, and received the affirmation of the major portion of the loyal population. It is peculiarly interesting to trace the growth of this public sentiment during the four years above named.

It was only about thirty days prior to the inauguration of the war that the following joint resolution engaged the serious attention of both Houses of Congress as a compromise measure for the conciliation of the South, upon the propriety of which the national legislature and the loyal community at large were about equally divided :

“Resolved, etc., That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid to all intents and purposes as a part of the said Constitution—namely:

“ART. 13. No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.”

This and other concurrent efforts for the prolongation of peace between the two sections, however, were dissolved by the smoke of battle in Charleston harbor, and the artillery of Beauregard, though it demolished the walls of a Federal fortress, swept the foundations from slavery, and sounded the death-knell of the institution whose extension it sought to accomplish. Important evidences of the change of public opinion at the North in this connection were seen during 1861 in the confiscation act of Congress, and in the following year in the abolition of the measures which had legalized slavery in New Mexico in 1859, a final extinction of the institution in the District of Columbia, additional measures of confiscation, and the initiatory proclamation of freedom for the slaves. The year 1863, moreover, witnessed the growth of this public sentiment in the second decree of emancipation and the abolition of slavery in the Territories, while the next succeeding year recorded the repeal of the fugitive slave law.

In all these measures indication is seen of the tendency of the loyal will for an extermination of slavery, but the confiscation acts of 1861 and 1862, and the Emancipation Proclamations of 1862 and 1863, alone laid the foundations of the Thirteenth amendment, whereby that end was finally attained. In this connection these particular measures will not engage attention except for a mere statement of their general import; their full examination will be connected with a discussion of the constitutionality of the amendment now before us. The confiscation act of 1861, stating it very briefly, provided that any and every slaveholder who should require his slaves to engage, either directly or indirectly, in the military or naval service of the disloyal forces, should forfeit all further claim to service of said slaves in all cases whatsoever. The act of July, 1862, moreover, provided "that all slaves of persons who shall hereafter be engaged in rebellion against the Government of the United

States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons or deserted by them, and coming under the control of the Government of the United States; and all slaves of such persons found on [or] being within any place occupied by rebel forces and afterward occupied by the forces of the United States—shall be deemed captives of war, and shall be for ever free of their servitude, and not again held as slaves.” The initiatory Emancipation Proclamation of September, 1862, contained the following provision: “That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward and for ever free; and the executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.” The final proclamation of freedom of January 1, 1863, declared all slaves in the rebellious section absolutely and for ever free. These executive measures will not be given in detail. Their substance is essentially as above stated.

At the present stage of this preliminary narrative we find the proximate, immediate origin of the Thirteenth amendment. Congressional and executive action, the latter spurred by the former, and both urged on by the people at large, during the period of four years we have so hastily traversed, had constantly looked to a total extinction of slavery—an eradication of the evil which had precipitated the war. The measures last above named had been devised and promulgated for this purpose simply as war-measures,

their authors for the most part claiming an authority for such action in the usual war-powers of Government, and not by reason of express authority conferred by the Constitution. This was entirely so as to the Emancipation Proclamations, and to a great extent as to the acts of confiscation. How far these measures are associated with, and form a basis for, the constitutionality of the Thirteenth amendment will hereafter appear. In view of a struggle forced by the South for the preservation and extension of slavery, which had cost, thus far, nearly a million of lives and seven thousand millions of treasure, the popular will of the loyal North was not content to leave the measures last above named the only insurers of its death. As a burial, therefore, from which there could be no resurrection, the perpetual inhibition of our national charter thereon was demanded and obtained. The history of the adoption of the Thirteenth amendment, and the legality of the form thereof (that is, the legality of the form of adoption, and not the constitutionality of the amendment itself), are now in order.

The text of the amendment is as follows :

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

“Congress shall have power to enforce this article by appropriate legislation.”

A joint resolution providing for the submission of a proposed amendment to the Constitution, as above, to the States for ratification, was taken up in the Senate February 1, 1861, and after lengthy and varied discussion in the mean time, came to a final vote April 8 of the same year, and was thereby adopted. The same was called for consideration in the House June 15 of the same year, and after a desultory debate was rejected. The resolution came be-

fore the House again, however, December 15th of the same year, and on January 6, 1865, debate upon the same was resumed, which continued till the 12th of that month, at which time further consideration of the measure was adjourned for two weeks. January 31, 1865, the resolution was again called and adopted.

The only important objection made against the legality of the vote was, that a legal number of members did not participate in the proceedings. The protest was based upon that portion of the Fifth Article of the Constitution which provides that "Congress, whenever *two-thirds of both Houses* shall deem it necessary, shall propose amendments to the Constitution," etc. etc. The construction put upon the foregoing by the Democratic members of Congress was, that "two-thirds of both Houses" meant two-thirds of all the Senators and Representatives to which both the loyal and disloyal States would be entitled, and that a legal two-thirds, for the purposes of amendment, must be two-thirds of the total representation of all the States, as aforesaid. As the representation in Congress had been reduced to such an extent, by the secession of several States, that two-thirds of all the members to which both loyal and disloyal States would have been entitled were not present and voting upon the resolution, such a construction would have annulled the proceedings. Both the Senate and House, however, assumed the position that "two-thirds of both Houses of Congress" meant two-thirds of the number necessary for the transaction of business; that is, two-thirds of a quorum. The latter is defined to be, by the Constitution itself, "a majority of the members," and necessarily, moreover, a majority of the members recognized by the two Houses, for the Constitution declares that "each House shall be the judge of the elections, returns and qualifications of its own members." A majority of the members of both Houses, as aforesaid,

were present on the occasion, and two-thirds of such majority cast their ballot in favor of the resolution ; so that, by the rulings of the Chair in both branches of Congress, the vote was a legal one. These rulings, moreover, although apparently unknown to either the Senate or House (or perhaps we had better say, by them forgotten—at least no notice was made thereof), were amply warranted by force of both ancient and modern precedent. At the first session of Congress, when the first ten amendments to the Constitution were proposed, the same objection was made in the Senate, and the Chair ruled that two-thirds of the members present—that is, two-thirds of a quorum—were sufficient to pass a resolution for the proposal of said amendments to the States. Again, in the spring of 1861, another precedent—which, as an historical incident, in the light of the peculiar positions wherein certain parties were placed, is to say the least amusing—was put upon record in the major house of Congress. John C. Breckenridge was at that time President of the Senate, and on the second day of March of the year above named a joint resolution proposing, as an amendment to the Constitution, the article given in full at the commencement of this chapter, restraining Congress from all subsequent legislation tending to the abolition of slavery, engaged the attention of that body. The representation in the Senate had then been reduced, by the effect of secession, to less than two-thirds of the number of members to which both the loyal and disloyal States would have been entitled, and Senator Trumbull (Republican) of Illinois raised the same objection which the Democrats did four years later at the time of the adoption of the resolution whereby the present Thirteenth amendment was to be proposed to the States for ratification. Senator Pugh (Democrat) of Ohio, however, made the point brought forward by the Republicans again at the time last above named, that “two-thirds of both Houses” meant

two-thirds of a majority of the members thereof, and President Breckenridge promptly sustained the same.

Looking at the question in the abstract, without regard to precedent, the opinion held by the Democrats in 1861 and the Republicans in 1865 is pre-eminently the sounder doctrine. "Two-thirds of both Houses of Congress!" Can it mean a numerical two-thirds of fifty, sixty or one hundred *private individuals* scattered about the country in a non-official capacity? The Constitution had reference to a deliberative, legislative body, to Senators and Representatives *assembled in an official capacity* for the transaction of *official* business—that is, legislation; and seemingly to avoid the uncertainty which would arise from a non-definition of what should constitute such an *official* Senate and House, expressly provided that "a majority of the members"—*of the individuals in their private capacity*—should constitute a legal official quorum—a legal *official* Senate and a legal *official* House. This provision of the Constitution last above named is an implied denial of the position of the Republicans in 1861 and the Democrats in 1865. It determined what, *numerically*, should constitute a legislative Senate and House; and a legislative Senate and House, constitutionally defined ("two-thirds of both Houses of Congress"), *must* mean two-thirds of such Houses as defined by the Constitution, and not two-thirds of the individual members, which the Constitution did not by its words at any time contemplate. The legality of the vote is beyond question. We now come to a consideration of a more difficult point—namely, the legality of the ratification by the States.

The Constitution of the United States provides that proposed amendments thereto must be "ratified by the legislatures of three-fourths of the several States" before they shall become an integral part thereof. The Thirteenth amendment was promulgated by the Secretary of State

December 18, 1865. The loyal and insurrectionary States at that time were thirty-six in number—twenty-five of the former and eleven of the latter. The question arose, in the application of the clause “ratified by the legislatures of three-fourths of the several States,” whether the assent of the legislatures of three-fourths of the whole number of States, both loyal and insurrectionary, or that of three-fourths of the loyal portion, would satisfy this constitutional requirement. In other words, Was the ratification of nineteen or twenty-seven State legislatures necessary for the adoption of the Thirteenth amendment? The latter alternative received, in a *quasi* manner, executive approval, and the assent of eight quondam disloyal legislatures was invoked to legalize the amendment. In the latter alternative it will be perceived, moreover, that the legislative assent of two insurrectionary States was imperative to legalize the amendment, even if all the loyal States voted in the affirmative; and in this latter aspect of the case, in view of the peculiar status of the eight insurrectionary States whose legislatures aided in the ratification, the question is a very grave one: If the assent of three-fourths of the legislatures of all the States was requisite for the adoption of the Thirteenth amendment, has such amendment ever received a legal ratification?

A glimpse at the reconstruction measures whereunder the legislatures of the eight insurrectionary States were organized which aided in the ratification of the amendment is here necessary for an intelligent pursuance of this discussion. The first attempt at reconstruction assumed the shape of an executive proclamation under date of December 8, 1863, whereby President Lincoln offered a pardon to the masses of the Southern people who had engaged in the rebellion, upon condition of their affirming allegiance to the United States Government and making oath to sustain all prior and subsequent executive and legis-

lative action in reference to slavery. This done, the proclamation provided for the organization of State legislatures and election of Senators and Representatives to Congress, without any intervention of the General Government; whereupon any State upon such basis would be restored to its original position as before the war. Under this proclamation of President Lincoln, Arkansas, Virginia, Tennessee and Louisiana adopted free State constitutions and forms of government, and ratified, through their respective legislatures, the proposed Thirteenth amendment. The organization of the legislatures whereby the above-named measures were adopted was made in Arkansas, Virginia and Louisiana under the direction and supervision of Generals Steele, Weitzell and Banks, officers commanding therein; while in Tennessee such organization was perfected under the orders of Andrew Johnson, military governor appointed for that State by President Lincoln. The legislatures and constitutions of Arkansas and Louisiana, moreover, had been organized and formed prior to the act of Congress described in the next succeeding paragraph.

Congress, however, in the summer of 1864, about six months subsequent to the issuing of the proclamation above described, passed a bill for the purposes of reconstruction, which provided for the appointment by the President of provisional governors for each of the insurrectionary States, who should proceed to call conventions, under certain forms, for the adoption of State constitutions and the organization of State governments in their several departments. These constitutions were required by this bill to prohibit slavery, and the bill, moreover, by a special section, declared slavery absolutely abolished in all the insurrectionary States. The bill was passed and submitted to the executive for his approval only an hour before the final adjournment of Congress. Mr. Lincoln withheld his signature on account of the temperate and weighty reasons found

in his proclamation following the bill, under date of July 8 of the same year, and the measure, consequently, never became a law. In the proclamation above named Mr. Lincoln fortified his position in regard to the bill on three grounds—namely: First, he was unwilling to commit himself exclusively, without further deliberation, to any *one* plan of reconstruction. Second, he was averse to declaring the free State constitutions of Arkansas and Louisiana, above described, of no avail. Third, he was not prepared to commit himself to the opinion that Congress, by an act of legislation, had the power and authority to abolish slavery. The proclamation further declared, however, that any State wishing to adopt the measures of the bill for purposes of reconstruction would receive the cordial assistance of the executive. It is thus seen that three insurrectionary States—Arkansas, Virginia and Louisiana—reassumed the position of integral States of the Union under Lincoln's proclamation of December 8, 1863, with the intervention of the General Government as seen in the official acts of the executive and the generals before named, while Tennessee reassumed such a position under the same proclamation and with the intervention of the General Government, such intervention, however, being exercised by the President and a military governor, instead of the officer commanding the department; all four of the States, moreover, through their respective legislatures, giving their sanction to the Thirteenth amendment. Thus far, under President Lincoln, we have a dual policy of reconstruction, and a consequent duplex basis of ratification by the insurrectionary States.

At this juncture Mr. Lincoln died, and Andrew Johnson succeeded to the presidential chair. This official adopted a policy of reconstruction similar to the plan of Mr. Lincoln, foreshadowed in his proclamation of December 8, 1863, but swerved, by reason of the changed condition of

things, from the course of his predecessor in putting the same into execution. President Johnson pursued a policy of reconstruction *with* the intervention of the General Government, and thereby followed the course pursued by Mr. Lincoln; but instead of exercising such intervention through commanding generals or military governors, he placed the insurrectionary States under the governorship of resident civilians. Under this policy of President Johnson, North and South Carolina, Georgia and Alabama were reconstructed and ratified the proposed Thirteenth amendment. These, with the four States reconstructed under Mr. Lincoln, already named, were counted in the "three-fourths of the several States" upon the ratification of whose legislatures the amendment was officially promulgated. These eight States, it will be borne in mind, exercised the office of ratification upon three separate bases of reconstruction.

Returning now to the main discussion, if the assent of three-fourths of the legislatures of the loyal States was alone necessary to legalize the adoption of the amendment, such legality was assured, as nineteen loyal States so put themselves upon record; but if the concurrence of three-fourths of both loyal and insurrectionary States, through their legislatures, was necessary for the attainment of such an end, then *the legality of the form of adoption* of the amendment depends upon *the legality of the reconstruction* of the eight States hereinbefore named. Let us seek a solution of the question in the briefest manner possible.

The proposition is asserted that, for the purposes of the Thirteenth amendment, "three-fourths of the legislatures of the several States" did mean three-fourths of the entire number, both loyal and insurrectionary. If the contrary principle is maintained, we admit at once the dogma of absolute State sovereignty, and the consequent doctrine of secession. A discussion of this doctrine is not relevant in this connection, but is nevertheless inferentially denied.

Our national Government is *not* a compact of the States, but a creation *ab initio*, distinct in itself, of the people at large. The truth of this is evidenced both in the causes which led to the formation of our present national Constitution and Government and in the letter of that instrument itself. The old Confederation which existed prior to our present Government *was a State league*. The General Government thereunder was powerless to enforce a solitary measure of diplomacy, legislation, war or any other peculiar policy of its own counter to the wishes of the several States. It was formed *by* the States, was responsible *to*, and acted *through*, the States—had no sanction whatever for its laws, and no hold upon individuals. The national ruin to which the country was rapidly tending under the Confederation led the people of the several States to disenthral themselves from its suicidal sway by the formation of our present Constitution; and the grand idea which underlaid all the deliberations for that end was to establish a national government independent of the States, with an absolute possession of separate and supreme power, responsible alone to the people—a government of individuals, and not of State corporations. The preamble of our national charter asserts this principle in the outset: “We, the *people* of the United States,” etc. etc. Thus constituted by the people a distinct, separate and independent entity of itself, it is *a unit*, and consequently inseparable and indissoluble, except by means of *absolute force*—by revolution.

In this immediate connection the question arises around which crystallizes the germ of the issue now under discussion—namely, At what point do “three-fourths of the legislatures of the several States” cease to mean three-fourths of the legislatures of all the States whose people have been once admitted to the Union? The question is plain and easy of solution: The Government being a unit, it is clearly at that point where a rebellious faction has conquered for

itself an independence and separate existence *which is recognized by the General Government against which it rebelled*. This separate existence and independence our Government never accorded the rebellious faction—*force had not overcome it*; consequently, the Government being a unit, “three-fourths of the legislatures of the several States” for the purpose of ratifying the Thirteenth amendment meant three-fourths of all the States ever admitted to the Union.

Our discussion of the legality of the form of the ratification of this amendment is now narrowed down to the question of the legality of the reconstruction of the eight seceded States whose legislatures participated therein. The abstract right of the General Government to reconstruct the insurrectionary States rested upon a very narrow foundation. The right of such action was derived from the constitutional authority of the United States to exercise its powers within State limits; and this authority is confined within the following words of our national charter—namely: “The United States shall guarantee to every State in this Union a republican form of government.” As to what constitutes “a republican form of government,” the Supreme Court of the United States, in the case of *Luther vs. Borden* (7 Howard U. S. 1), held that the President and both Houses of Congress formed the proper tribunal to decide. That is, it is a political and not a judicial question. The deduction is properly made from this proposition that such a political reorganization of the insurrectionary States as gives them, in the opinion of the President and both Houses of Congress, a republican form of government, is a legal reconstruction of said States. That is, a plan of reconstruction approved by both Congress and the executive represents the constitutional means for placing the insurrectionary States in a position to legally ratify the proposed amendment.

At the time the present Thirteenth amendment was submitted to the States for ratification the insurrectionary portions of the same were held either by the rebel authorities or else by the military power of the United States. Owing to this condition of things the point has been made that the only proper and legal means by which the executive could assume control of said States for purposes of reconstruction was through the exercise of his authority as commander-in-chief of the army and navy. This method, it is true, has been held *a* legal one by our Supreme Court, but it has not been held the *only* one. The sounder doctrine is, in accordance with the discussion in the next preceding paragraph, that such means may be made use of for the purpose of reconstruction, for the purpose of guaranteeing to the States a republican form of government, as shall meet the approval of the executive and both Houses of Congress.

It will be remembered that the legislatures of eight insurrectionary States aided in the ratification of the present Thirteenth amendment. Of these, Arkansas, Virginia, Tennessee and Louisiana were reconstructed under a mere proclamation of President Lincoln, unsupported by any bill or measure of Congress, and North and South Carolina, Georgia and Alabama under a similar policy of President Johnson, differing from that of President Lincoln only in the manner of execution. Upon the premise, then, as heretofore maintained, that such a reconstruction is alone legal as is approved by both Congress and the executive, the conclusion to be drawn from the foregoing would at first glance appear to be that none of the eight insurrectionary States above named were legally reorganized at the time of the ratification of the Thirteenth amendment. Congress, however, failed to express any disapproval of such reorganization until March 2, 1867, as will hereafter appear; that is, it did not until then declare against the

same in a legal, official method—namely, legislation. The act last above named, moreover, which consigns the lately insurrectionary States to a second reconstruction and declares their governments illegal, *has no retrospective effect*; which fact, in connection with the prior passive approval by Congress of the executive policy of reconstruction, legally as well as reasonably implied from its official silence thereon, validates all measures instituted for the restoration of the South and acts done thereunder, thus removing the apparent difficulty in the due ratification of the amendment.

In the case of the Fourteenth and Fifteenth Articles no such difficulty exists, as will be seen in the examination thereof. The one first named, indeed, has been declared valid by a joint resolution of Congress, which action removes all possibility of doubt, as an approval of the article itself sanctions all the means whereby the ratification of the same was secured. A similar resolution in reference to the Thirteenth and Fifteenth Articles would be eminently proper, and render the validity of the last three amendments to the Constitution invulnerable in every respect, although, it must be confessed, by a somewhat slovenly process. A preconcerted and perfected plan of reconstruction between President Lincoln and Congress in 1864 would have avoided a great deal of confusion and disorder, and rendered unnecessary no small amount of roundabout legislation.

The validity of the vote in Congress proposing the amendment, and the legality of the ratification thereof by the States having been sustained, an examination of the constitutionality of the amendment itself is now in order. A discussion of this phase of the subject, although entirely legal in its bearings, cannot, of course, in consideration of the purpose of this treatise, be conducted in a purely legal manner, with full citations of authorities and precedents,

nor in the style, moreover, of a text-book upon legal topics. This examination of the constitutionality of the amendment, then, will be made almost wholly in the light of principle, and such principles, moreover, as require no invocation of either cases or precedents to corroborate their truth or validity, but which, by reason of their long adjudication, are everywhere regarded as fundamental elements of constitutional law. This, too, is the most immovable basis of all legal discussion whatsoever.

The power and authority, as well as the form, for amending the Constitution is conferred and prescribed solely by that instrument itself in the words of the Fifth Article, reference to which may be had if desired. The purpose which the Thirteenth amendment was intended to serve was the abolition of slavery. The main inquiry in the outset of this discussion consequently is, Does the Constitution authorize an amendment thereto which shall accomplish that result? An answer to this interrogatory necessitates a brief preliminary statement of the kind of powers which the Constitution confers, and the principles which apply to the exercise thereof. These powers are special, general and implied; and they exist either affirmatively or negatively—affirmatively, when they are vested in certain parties by a direct affirmative grant; negatively, when they are vested in such parties by reason of their possession and exercise being forbidden and prohibited to all others. In the case of special and general powers, if both bear upon the same subject-matter the force of the former overrides the latter, in reference to such subject-matter, to the extent which the letter and spirit of such special power operates thereon. In the case of general and implied powers the same rule applies, and the former supersede the latter, in reference to the same subject-matter, to the extent above named. The same principle attaches to the exercise of these powers, moreover, when their aid is invoked for

the sanction of some *general* act which with difficulty finds authority in the letter of the Constitution. It is thus seen that in all cases special have the precedence of general, and the latter supersede implied, powers as conferred by our organic law. Another principle of vital importance which demands association herewith is, that every constitutional power is independent and untrammelled, and the legal exercise thereof may be invoked in all cases without any restriction save that which is found in the letter of the Constitution itself. In the case of *Gibbons vs. Ogden*, in the United States Supreme Court, Chief-Justice Marshall laid down the foregoing proposition in his usual terse, graceful and inimitable rhetoric, as follows—namely: “Every power granted by the Constitution is complete in itself, may be exercised to its utmost extent, and acknowledges no limitation except that which is written in the Constitution.” As an answer to the objection often raised of the probable evils which may flow from the right to such an unqualified exercise of constitutional power, Justice Marshall in the same case further says: “The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are in this, as in many other instances—as that, for example, of declaring war—the sole restraints on which the people have relied to secure them from its abuse. They are the restraints on which the people must often rely in all representative governments.”

In the light of these general, fundamental principles attention is now recalled to the interrogatory propounded at the commencement of the next preceding paragraph—namely: “Does the Constitution authorize an amendment thereto which shall abolish slavery?” What is the general power of amendment conferred by the Constitution? It is contained in the Fifth Article thereof—that is:

"ARTICLE V.

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the First Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

Article I., Section 9, clauses first and fourth.

First clause: "The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight."

Fourth clause: "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

Down to the word "Provided" in Article V. a *general* unlimited power of amendment is therein conferred. The remaining portion of this article, and the first and fourth clauses of the ninth section of Article I. which follow it, are to be read and construed together, and thus read and construed they constitute a *special, passive* power of amendment. These general and special powers, it will be observed, bear upon the same subject-matter. Recalling the proposition hereinbefore laid down, that when general and

special powers are considered together as bearing upon the same subject, the latter supersede the former to the extent with which by their letter and spirit they operate thereon—To what extent is the general power of amendment conferred by Article V., down to the word “Provided,” abridged? Recourse to the remaining portion of Article V., and to the first and fourth clauses of the ninth section of Article I., replies: “No amendment shall be made to the Constitution whereby either the African slave-trade shall be prohibited prior to the year 1808, a capitation or other direct tax be laid disproportionately to the census, or by which a State, without its consent, shall be deprived of its equal suffrage in the Senate.” The foregoing are the only special powers (passive, to be sure) in the Constitution upon the subject of amendment. Neither by letter nor spirit can they be construed to so abridge the general power of amendment conferred in Article V. as to prohibit an amendment thereunder whereby slavery shall be abolished.

Thus much as to the general and special powers of the Constitution in this respect. Let us see if an inhibition upon such amendment can be found in the implied powers of our organic law. It is here, indeed, that most of the assaults have been made upon the constitutionality of the Thirteenth amendment, and the principal form of attack thereunder has been upon the theory that the abolition of slavery by a constitutional amendment interfered with the rights of property as guaranteed in our national charter. The plea is specious, but not solid. The words of the Constitution upon which this argument is based are found in Article V. of the amendments thereto—namely: “No person shall be deprived of life, liberty or property without due process of law.” Up to the time that the Thirteenth amendment was promulgated the Constitution impliedly, and to the opening of hostilities the United

States courts expressly, had recognized and affirmed the right of property in slaves. Leaving the confiscation acts of Congress and the Emancipation Proclamations of President Lincoln for the present out of this inquiry, and the question now arises, Does the Thirteenth amendment work such a deprivation of property in the case of former owners of slaves as the Constitution, in the guarantee above cited, contemplates? The clause quoted contains three distinct guarantees. The first two are purely of a personal character, and the last one, as to property, alone requires our consideration, except so far as analogous reasoning will assist the investigation. An interpretation of the letter of the clause above named, followed by a construction of its spirit, constitutes the path through which we may be led to a solution of the point in issue. The meaning of the letter has received repeated and consistent definitions in our courts, and for the husbanding of space a discussion of this meaning in the abstract will be waived, and reliance placed upon these adjudications therefor, as they are in no respect contradictory or antagonistic. The substance of these decisions finds correct expression in the following words—namely: That the rights of personal security, personal liberty and private property shall not be interfered with, infringed upon or destroyed except in pursuance of a judgment of a regularly-constituted court of law, obtained through the medium of a regularly-conducted suit or prosecution therein, according to the legally-prescribed rules therefor. Or, as Justice Bronson of New York expresses it in 4 Hill, 146: “The meaning of the section, then, seems to be that no member of the State shall be disfranchised or deprived of any of his rights or privileges unless the matter shall be adjudged against him upon trial had according to the course of common law. The words ‘due process of law’ in this place cannot mean less than a prosecution or suit instituted and conducted according to

the prescribed forms and solemnities for ascertaining guilt or determining the title to property.”

In the light of this interpretation of the letter of this constitutional guarantee, the question is here pertinent: Can slavery be constitutionally abolished only by means of the enforcement of a judgment of a court of law obtained in a suit against the several owners of this peculiar species of property? A construction of the spirit of the constitutional clause under discussion now in order will furnish an answer to the interrogatory. The rule of constitutional construction announced and continuously maintained, without any deviation, by the Supreme Court of the United States, is, that no meaning shall be placed upon the words of any particular portion of the instrument which shall defeat the exercise of another power therein conferred, *unless such words are in the form of a special power upon the same subject-matter*. Therefore, although individuals under the Constitution shall not be *immediately* deprived of property only in the form as defined by Justice Bronson above, still, another separate and distinct power of the Constitution, like the power of amendment, may be exercised, even though, in its *secondary* and more remote effect, it works a deprivation of property. That is, notwithstanding the Constitution by one power prohibits the deprivation of property except by due process of law, as hereinbefore defined, nevertheless that instrument may be amended under a separate and distinct power, even though such amendment eventuates, in a remote connection, in the destruction of the property in slaves. Any other construction of the Constitution, indeed, would defeat the operation of the entire instrument. There is hardly a power in it the exercise of which might not be totally checked by setting up against it the words of some other power upon a different subject-matter which seemingly contradict it. The line of division is that heretofore announced—namely, the exercise of

every constitutional power is distinct and independent of itself, except when restricted by a more *special power upon the same subject*. The words of Chief-Justice Marshall in *Gibbons vs. Ogden*, in fact, as already stated, dispose of the whole question summarily and conclusively—namely: “Every power granted by the Constitution is complete in itself, may be exercised to its utmost extent, and acknowledges no limitation except that which is written in the Constitution.” The principle herein contended for, moreover, has received a very recent reiteration by Justice Strong of the Supreme Court, in sustaining the constitutionality of the legal-tender act. We have taken exceptions to this opinion, as a whole, in a prior chapter, but the soundness of the following declaration is beyond impeachment—namely: “The provision referred to has always been understood to refer only to a direct appropriation, and not to consequential injuries resulting from the exercise of a lawful power.”

The constitutionality of the amendment has also been questioned on the ground that it violated another provision of our organic law, which forbids the taking of private property for public uses without just compensation. The argument just dismissed is a sufficient rebuttal of this position, and renders a detailed discussion thereof entirely unnecessary.

The amendment has also been attacked by the objection that, as the General Government is a compact of the States, it must be assented to by the legislature of every State before it can be made binding thereon. This view, of course, is a perfect absurdity, as the allowance of the claim would set at defiance the entire right of amendment as conferred in Article V., which declares that the assent of the legislatures of “three-fourths of the several States” only is required to constitute a legal ratification. But granting, for the moment, the conclusion of the argument correct, the

premise that this Government is a State league has already been proved erroneous. The main proposition destroyed, all conclusions therefrom share in the demolition.

The argument that the amendment interferes with the implied constitutional guarantee that each State shall be the conservator of its own domestic relations is also answered by the position maintained as to the force of general, special and implied powers upon the same and different subject-matter, and in the decision of Chief-Justice Marshall in *Gibbons vs. Ogden*, already cited.

In reference to these implied powers of the Constitution in this connection, allusion has thus far been made only to those which have been alleged to militate against the constitutionality of the amendment. Brief reference will now be had to one or two powers of this character which seem to operate conclusively in its support. The special power as to amendment resulting from a concurrent construction of the proviso of Article V., and the first clause of the ninth section of Article I., prohibits an inhibition upon the African slave-trade *prior to the year 1808*, plainly anticipating that by that time the Constitution would be changed in reference to this institution of slavery, the existence of which its framers would not admit in actual words, and which obtained a prolongation of its existence thereunder as being the only *immediate* basis whereby the Confederation could be abandoned for our present Government. There are historical incidents, moreover, which corroborate this view of the question. In the debates upon the formation of the Constitution, when the clause, "No person shall be deprived of life, liberty or property without due process of law," was under discussion, the South Carolina and Virginia delegation insisted that "freeman" should be substituted for "person," and "the law of the land" for "due process of law." The proposition failed

of support, the intention of the convention tending plainly to a refusal of any permanent recognition of slavery.

The validity of the amendment, moreover, stands upon other grounds. It merely proclaimed in an article of constitutional law the existence of a fact already accomplished by the legal exercise of the war-powers of Government, the confiscation acts and the Emancipation Proclamations. The exercise of these measures was in direct and legal pursuance of war-powers which attach to every government as a means of weakening the strength of its enemies in arms. The first aimed to destroy the property, the second to defeat a moral means of support, of the enemies of our Government. The only question in this connection is, Were the insurrectionary masses of the South the enemies of the United States? This question as to who shall be regarded the enemies of our Government has been repeatedly held by the Supreme Court to be a *political* question, and, *like all other political questions*, in accordance with a long series of adjudications, the proper tribunal to decide upon the merits thereof is Congress and the executive. These departments of our Government, the one by legislation and the other by official proclamations and orders, repeatedly held the insurrectionary masses of the South, during the years 1861-64 inclusive, to be enemies of the United States. As enemies of our Government the latter had undoubted right, by force of the war-powers vested therein, to adopt and enforce any measure which would tend to the exhaustion of the rebellious faction. The Emancipation Proclamations operated in this direction, as they enlisted the sympathies of four millions of blacks in the enemy's territory in our favor—created, indeed, an army of occupation to that extent in the heart of the enemy's country. As to the form of exercising this war-power, it was wholly in the discretion of the executive, there being no legal precedent for his guidance. The confiscation acts operated in the same

direction, as they gave freedom to all slaves who should escape from the enemy's territory or be found in any portion thereof by our advancing forces. These acts could not operate beyond this. Confiscation means an appropriation of property, and the latter implies possession. These acts, therefore, were powerless to lay hold of slaves under the immediate control of the enemies of our Government, but when they had escaped from, or were found by our armies in, the enemy's country, there was a possession which warranted a resort to confiscation. The manner in which this war-power shall be exercised has been judicially defined in the case of the Schooner *Juniata* (1 Newberry Adm. 352)—namely, by a special act of Congress; and this was the course our Government pursued.

The combined operation of these two war-powers of Government, therefore, had virtually accomplished what the Thirteenth amendment to our organic law constitutionally declared. The latter, as it were, merely made a statute—which by a succeeding statute would have been capable of repeal—an article of our Constitution, which would not be subject to reversal save in the prescribed constitutional form. It simply husbanded the fruits of our victories.

We are thus, by force of this discussion, warranted in asserting that the resolution proposing the Thirteenth amendment was legally adopted by Congress, that the same was legally ratified by the legislatures of three-fourths of the several States, and that its constitutionality is beyond suspicion.

Of its eminent desirability no words are needed in support. It removed the only stain from our national escutcheon; the lips of the republic ceased thereby to utter a libel upon liberty, falsify its record and court the condemnation of God. We can perhaps summon no more

weighty, elegant or scholarly authority to our support in the conclusion of this discussion than to quote the words of William Whiting, the able solicitor of the War Department under Lincoln, who, in his "War-Powers of Government," speaks as follows:

"Among the war-measures sanctioned by the President, to which he has more than once pledged his sacred honor, and which Congress has enforced by solemn laws, is the liberation of slaves. The Government has invited them to share the dangers, the honor and the advantages of sustaining the Union, and has pledged itself to the world for their freedom. Whatever disasters may befall our arms, whatever humiliation may be in store for us, it is earnestly hoped that we may be saved the unfathomable infamy of breaking the nation's faith with Europe and with colored citizens and slaves in the Union.

"If the rebellious States shall attempt to return to the Union with constitutions guaranteeing the perpetuity of slavery, if the laws of these States shall be again revived and put in force against free blacks and slaves, we shall at once have reinstated in the Union, in all its force and wickedness, that very curse which has brought on the war and all its terrible train of sufferings. The war is fought by slaveholders for the perpetuity of slavery. Shall we hand over to them, at the end of the war, just what they have been fighting for? Shall all our blood and treasure be spilled uselessly upon the ground? Shall the country not protect itself against the evil which has caused all our woes? Will you breathe new life into the strangled serpent, when without your aid he will perish?

"If you concede State rights to your enemies, what security can you have that traitors will not pass State laws which will render the position of the blacks intolerable *or reduce them all to slavery?*

"Would it be honorable on the part of the United States

to free these men and then hand them over to the tender mercy of slave laws?

“Will it be possible that State slave laws should exist and be enforced by slave States without overriding the rights guaranteed by the United States law to men, irrespective of color, in the slave States?”

“Will you run the risk of these angry collisions of State and national laws while you have the remedy and antidote in your hands?”

An allusion will here be made which, in some respects, would find a more appropriate place at the close of our chapter on Reconstruction, but which, for many reasons, and principally that of the death of Mr. Lincoln at this period, is more pertinent in this connection. Reference is had to the respective reconstruction measures of Presidents Lincoln and Johnson. We propose by no means to interpose a defence for the obstinate indiscretions of the latter official, but he who calmly and dispassionately reviews our political history in this one particular will be powerless to detect any material difference in the measures pursued by these two executives for the restoration of the South. Under Mr. Lincoln a reorganization of the legislatures and State governments of Virginia, Arkansas, Louisiana and Tennessee was effected. This end was accomplished, moreover, by a line of action within the States above named in direct pursuance of Mr. Lincoln's proclamation of December 8, 1863, the gist of which, in reference to reconstruction, is as follows—namely:

“And I do further proclaim, declare and make known, that whenever, in any of the States of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina and North Carolina, a number of persons, not less than one-tenth in number of the votes cast in such States at the presidential election of the year of our Lord one thousand eight hundred and sixty, each

having taken the oath aforesaid, and not having since violated it, and being a qualified voter by the election law of the State existing immediately before the so-called act of secession, and excluding all others, shall re-establish a State government which shall be republican and in no wise contravening said oath, such shall be recognized as the true government of the State, and the State shall receive thereunder the benefits of the constitutional provision which declares that 'the United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or the executive (when the legislature cannot be convened), against domestic violence.'

"And it is suggested as not improper that, in constructing a loyal State government in any State, the name of the State, the boundary, the sub-divisions, the constitution and the general code of laws, as before the rebellion, be maintained, subject only to the modifications made necessary by the conditions hereinbefore stated, and such others, if any, not contravening said conditions, and which may be deemed expedient by those framing the new State government."

Mr. Lincoln hereby plainly contemplated that the people of the South should be left to the exercise of the utmost freedom in complying with the conditions imposed for their restoration. True it is that in the first three States Mr. Lincoln placed the supervision of the work under the generals commanding the departments, and in Tennessee under the military governor of the State. A very important fact, however, is to be remembered in this connection. All the States above named were restored, so to speak, under Mr. Lincoln, *prior to the close of the war, before Lee's surrender, and in the midst of existing and open hostilities in the identical territory undergoing the process of reconstruction.* In this condition of things Mr. Lincoln could

do no other way, with any show of reason whatever, but entrust the supervision of the work to either the military officials in command or a military governor who for nearly three years had been at the head of the State government. With the war virtually closed, and the Southern people no longer in arms against the Government, whether Mr. Lincoln would have pursued the reconstruction of the South through the immediate supervision of military or civil agencies no one can affirm. The tenor of his proclamations of December 8, 1863, and of July 8, 1864, by the latter of which he explained his refusal to sign the reconstruction act of Congress passed at the last session thereof, foreshadows a policy of leaving reconstruction entirely in the hands of the Southern people, *accompanied by abundant and adequate protection for all citizens in the exercise of their political rights*. This last he would have undoubtedly compelled at whatever cost, but that he would have *initiated* or *pursued*, after the cessation of hostilities, a plan of reconstruction under the guidance of military authority, as desired and finally compelled by Congress, except so far as would have been necessary to protect all classes in the exercise of the elective franchise, is a claim which finds no warrant in his official acts in this connection. In his proclamation of July 8, 1864, in explaining his reasons for withholding his signature to the measure of Congress before cited, he expressly states that he was unwilling to commit himself inflexibly to the Congressional measure, but yet, as "*one very proper plan*," he would heartily co-operate with any Southern State that might choose to adopt it. The proclamation last alluded to is an instance of the most wise and temperate deliberation that has ever characterized a state paper of our Government, and was invulnerable to the bitter personal attack which it afterward called forth from the leaders of the Congressional measure. The reconstruction war, so bitterly waged between the legislative

and executive branches of our Government after the induction to office of President Johnson, was opened, indeed, prior to the lamented death of Mr. Lincoln, and in a manner inconsiderate, if not extremely unwise. A *quasi* circular letter was published in the New York *Tribune*, August 5, 1864, by B. F. Wade and Henry Winter Davis, the leaders of the Congressional measure, wherein Mr. Lincoln was attacked with much of the undignified bearing which characterized the subsequent reconstruction conflict. The letter flatly accused him of military usurpation in Louisiana (a policy he was strenuously striving to avoid) and of the most notorious violation of the constitutional powers of Congress ever instanced by any prior executive. The violence of the assault destroyed its moral force. It is, however, in all probability, a tenable position to assume that Mr. Lincoln died when he had reached the very pinnacle of his popularity at least, if not the utmost limit of his usefulness. The people would have doubtless sustained him in acts which in any other executive would have been stamped as almost unwarrantable, but it would have been hardly possible for him to emerge from the "impending conflict" with his reputation unscathed and his power for good uninjured.

When President Johnson inaugurated his policy of reconstruction rebellion was crushed, hostilities had for the most part ceased, and the Southern people had in most instances laid down their arms. His line of action in this direction has been already defined, and, as already stated, differed from his predecessor's only in the manner of its execution. Mr. Johnson placed the remaining work of reconstruction in the charge of resident civilians—provisional governors appointed expressly for that purpose. It was a policy, moreover, which Mr. Lincoln would have in all probability adopted had he lived, but which, unlike his successor, he would have manfully swerved from had it

proved deficient. This was Mr. Johnson's fault. He failed to fully protect the people in the exercise of their legal rights, and stubbornly refused to cure the defects of his system when laid open to his inspection. His policy of reconstruction, like Mr. Lincoln's, was, in the abstract, pre-eminently sound, wholesome and legitimate.

Concurrently with every cessation of hostilities civil government should supersede military rule. If such civil government is unable to sustain itself, then the military arm may be rightly invoked to preserve its existence. Such civil government, moreover, should be formed from, and established by, the people within the territory lately in insurrection, with all needed protection, of course, to every class therein, and the imposition of as stringent conditions as the conqueror may see fit to prescribe.

It is in this connection that the reconstruction error of Congress is apparent. It should have provided a policy of reconstruction upon a civil basis immediately after the cessation of hostilities, thereby removing much of the bitterness of feeling from the Southern mind, and supplemented it with whatever protection, armed or otherwise, the insurance of its life and the civil and political rights of all classes might afterward demand. This would have allayed Southern discontent, avoided legislative and executive collision, placed reconstruction upon a legal foundation, and rendered unnecessary the voluminous legislation of Congress afterward resorted to.

THE FOURTEENTH AMENDMENT.

Powers and privileges are peculiar elements of political organism. In monarchical governments the road to either is long, steep and difficult of ascent, but, the meridian once passed, the descending journey is very short and easy of transit. As an English writer and jurist has tersely put the corollary truth last above named: "Between the prisons

and graves of princes the distance is very small." Not so, entirely, with democratic or republican institutions. The summit of political position once reached, the decline is here no less rapid, nor the period of its limitation farther removed. The element of decay under all conditions and circumstances is subject to very similar and kindred influences. As falling bodies, by the law of gravitation, ever gather fresh impetus with each bodily measurement of space in their downward course, so is material, moral or physical dissolution equally accelerated with every remove from an incipient decline. It is the universal and inevitable law of death. The lapse of political power and privilege is in all cases, consequently, equally swift, but when we come to consider its growth the conditions thereof are by no means the same. While it is purely exotic in monarchical, it is emphatically indigenous to democratic or republican, countries. The mobility of the latter is advantageous for its advancement, and often affords it a premature maturity. This easy growth of political status in some respects is one of the greatest drawbacks to the real prosperity of free institutions, and does much to place them in a prejudicial light when compared with stronger forms of government.

The Fourteenth amendment, viewing it in a non-partisan sense, whereby four millions of ignorant blacks were unqualifiedly, and without any discrimination as to intellectual fitness, put upon the high road to suffragan power, is one of the most forcible illustrations of the unhealthy growth of political privilege which the annals of this country afford. It was by no means the first one. In many instances through the North equally ignorant native and prematurely naturalized whites had been endowed with the same high prerogative, but the period of the proposal of the Fourteenth amendment was peculiarly available for placing the elective franchise throughout the entire country upon a uniform, sensible and durable basis. This thought will be pur-

sued more at length at the close of this chapter ; at present indorsement will be merely given to one of the wisest expressions that ever fell from the lips of Thaddeus Stevens, and that unwittingly of its just import, when in the House debate advocating the amendment he said, "Forty acres of land and a hut would be more valuable to the negro than the immediate right to vote."

The amendment had its origin, morally speaking, in the wise, commendable, Christian and thereby imperative motive of advancing the condition of, and doing justice to, a resident native race which had long been cruelly and inhumanly enslaved. Politically speaking, it had its origin in the desire of its official movers to control the future, or at least the immediate future, representation in Congress from the South—a desire, under the then existing circumstances, by no means unreasonable or improper. These were the ends in view. They might and should have been secured by more utilitarian means, but so far as the last-named purpose is concerned, the amendment, although crude in some respects, is a piece of very ingenious legislation.

Prior to the rebellion the Southern representation in Congress was based upon the whole number of whites, and three-fifths of the slave population in addition. The theory of the slave-basis was that slaves were a species of property subject to taxation. They were a kind of property, moreover, subject to a direct tax (which last will be discussed in the chapter upon that subject), and consequently all levies thereon had to be laid in accordance with the provision of the Constitution which requires that direct taxes shall be apportioned upon the basis of the representative population. The abolition of slavery, destroying in its consequent effect the property in slaves, and thereby relieving their former owners of the tax formerly imposed upon them in this direction, put an end, of course, to the three-fifths principle of representation in Congress.

For the philanthropic and politic purposes before mentioned the immediate enfranchisement of the blacks was resorted to, though not in a direct and affirmative form. Public sentiment, at the North even, at the time of the proposal of the Fourteenth amendment for ratification, would not have countenanced the immediate bestowal of an unqualified and unrestricted right of suffrage upon our former slave population. The amendment (which see in the Appendix) was, so to speak, a provision of suffrage for the blacks in a negative form. Its provisions are mostly punitive, and are, in the main, as follows :

First. All native and naturalized persons are declared citizens ; their privileges shall not be abridged by State laws, nor shall any such statutes deprive any such persons of life, liberty or property without due process of law ; nor shall any such persons be denied the equal protection of such State ordinances.

Second. Representatives shall be apportioned in the States according to their respective numbers, excluding Indians not taxed. If any such person, twenty-one years of age, shall be denied by any State the right to vote at any United States or State election, except for crime, the basis of representation therein shall be proportionately reduced.

Third. Imposes political disabilities upon certain classes of the South, with power of removal thereof by a two-thirds vote of Congress.

Fourth. Declares the validity of the public debt, denies that of the Confederate one, forbidding the assumption of the latter by any State or the United States, as also compensation for the loss of property in slaves.

We have thus briefly stated the cause, origin and purposes of the amendment. Reasserting the latter, the grand ends which the measure sought to accomplish were the advancement of the blacks by their initiatory enfranchisement, and the consequent control by its movers of the immediate

Southern representation in Congress. The minor points are contained in the last two preceding paragraphs. The discussion will now be conducted in the following order—namely: The history and legality of the Congressional vote proposing the amendment and its ratification by the States; its constitutionality, resulting effect upon community, and a criticism of its merits. Much of this ground has been already traversed in our examination of the Thirteenth amendment, whereby considerable detail will be obviated in this connection.

When Congress assembled in December, 1865, there was no inconsiderable feeling of dissatisfaction, North as well as South, in reference to the unsettled condition of the country. The Thirteenth amendment was promulgated a few days after the opening of Congress (December 18), and although the legislatures of eight insurrectionary States had aided in the ratification thereof, four of which had been restored under President Lincoln and four under President Johnson, none of them had been admitted to their representation in Congress. The business community was peevish and restless over the delay in reconstruction, trade was stagnant, and all commercial and manufacturing pursuits, in fact, were anxiously and impatiently waiting for a permanent readjustment of political, social and mercantile relations. It was, to say the least, a grave inconsistency to accept the acts of a people through their legislatures as valid for the purpose of legalizing an amendment to the national Constitution, and then deny the legality of their action in returning a representation to Congress. That certain classes were not allowed a free exercise of their political rights in this last proceeding at the South, it is true. Neither were they in the first; and while no intention is *here* made to censure the refusal of admission of this Southern representation to Congress, neither can the plea of silence be given to excuse the inconsistency of accepting the action of South-

ern legislatures formed and organized under similar circumstances, simply because such action chanced to be satisfactory.

During the recess prior to the session of Congress just referred to (December, 1865) the political opinion of our national legislators had resolved itself into the necessity of a measure whereby the blacks should share in the Southern elections as a *sine qua non*, a condition precedent for the return of a delegation to Congress which should be allowed admission thereto. Owing to the growing discontent among the people, the necessity for determinate, was no greater than that for immediate, action which should lead to a final solution of the reconstruction problem. Numerous resolutions embodying the gist of the measure above noticed were consequently pressed upon the attention of Congress at the commencement of the session, with a view of having them submitted to the legislatures of the several States for ratification as amendments to the Constitution. The debates upon these resolutions, in both Senate and House, were desultory as usual, until finally, the whole matter having been referred to a joint select committee, the first draft of the present amendment was reported to the House by Thaddeus Stevens, April 30, 1866. It was called up for consideration May 10 following, and, on a demand for the previous question by Mr. Stevens, was adopted. The same was amended in the Senate and passed June 8th, the amendment of that body concurred in by the House the 13th of the same month, and the amendment as it now stands deposited in the State Department June 16. On the 20th of the same month a certified copy thereof was forwarded by the Department to the governors of the several States.

A similar debate occurred as to the legality of the vote upon the resolution in Congress as that already referred to in our examination of the Thirteenth amendment. As the points raised were precisely the same, our discussion in the

prior connection upon this matter is equally applicable here, and need not be repeated.

At this juncture the war-cloud of reconstruction, which had been so long gathering between Congress and the executive, manifested itself in open hostility, and not till June 20, after a resolution passed for that purpose by both Houses, did the President submit the amendment, and then under a message to Congress of his disapproval thereof.

Before proceeding to consider the legality of the ratification of this amendment by the legislatures of the several States, it is necessary, for a clear understanding of the subject, to trace the progress of reconstruction from the time of the submission of the same to its final promulgation. It will be remembered that when President Johnson assumed the duties of chief executive in April, 1865, four of the insurrectionary States had been restored, so to speak, under the policy of his predecessor. At the time of the submission of the Fourteenth amendment for ratification the remaining seven insurrectionary States had all been reconstructed under President Johnson, but none of the whole number (eleven) had been admitted to a representation in Congress. As the whole number of States was thirty-seven, twenty-six loyal and eleven insurrectionary, thus requiring the assent of twenty-eight to legalize the amendment, and the assent, moreover, of two of the insurrectionary number, the same anomalous condition of things hereinbefore alluded to still existed—namely: Congress was denying certain States a representation therein, and yet depending upon the action of their legislatures to stamp the Fourteenth amendment as a legal and integral portion of our Constitution.

The amendment, as before stated, was submitted for ratification June 20, 1866. The legislature of Tennessee ratified the same on the 19th of the following month, whereupon Congress, which had not adjourned since the passage

of the resolution proposing the amendment and the submission of the same, by a special act declared this State fully restored and entitled to her representation in that body.

Shortly after this date Congress adjourned *sine die*. When it assembled again in December (1866) the prospects for the ratification of the amendment were by no means encouraging. Several Southern State legislatures had rejected it, and at the close of January, 1867, the following State legislatures had pronounced against it—namely: Texas, Georgia, North Carolina, South Carolina, Virginia, Kentucky and Delaware. As the legislatures of the remaining insurrectionary States, together with the loyal ones of Maryland, New Jersey, and possibly one or two others, were looked upon as sure to declare themselves of the same opinion, the ratification of the amendment under the then existing circumstances was of course impossible.

In view of this condition of things, Congress resorted to the decisive measure of March 2, 1867, the principal features of which are as follows: It declared the non-existence of a legal government in all of the lately insurrectionary States except Tennessee, consigned them to military rule for the purpose of reorganization, directed the character of the government which should be organized therein and the constitutions thereof—the latter to be submitted to Congress for approval—and made the ratification of the Fourteenth amendment, among other things, an absolute condition for their restoration to a civil basis and the recognition of their representation in Congress. This act was amended by subsequent ones under date of March 23 and July 19, 1867, and March 11, 1868. These last, however, were mere enforcement measures of the scheme of the original act, and do not require particular notice. They did not change the substance of the original plan. In our allusion to these various reconstruction measures throughout

the present chapter as little comment thereon has been and will be made as possible, the same being reserved for the chapter solely devoted to that subject.

By this plan of reconstruction, Congress, among other things, compelled the establishment of a doctrine, at the hands of the insurrectionary States, which it hoped would have been granted by their own volition—the enfranchisement of the blacks. It merely declared, in this respect, in an express form, what it impliedly decreed when the Fourteenth amendment was submitted—namely: that its sanction by the insurrectionary States must unlock the door for their representation in Congress. All of the reconstruction acts referred to in the last preceding paragraph, moreover, became laws without the approval of the executive by means of the usual two-thirds vote.

The process of ratification of this amendment, both North and South, was much more tardy than that of the one which preceded it. It will be remembered that the assent of twenty-eight States was required to give it validity as a part of our Constitution. On the 20th of June, 1868, Secretary Seward certified the amendment as an integral part of the Constitution, provided the ratification thereof by the legislatures of the States of Ohio and New Jersey was not annulled by their alleged subsequent withdrawal of the same. As the whole number having assented at this period, counting Ohio and New Jersey, was twenty-nine, one more than necessary, all doubt would be removed as to the completeness of the ratification, so far as number was concerned, by the accession of a single State to the list. That is, thirty States would have then given in their adhesion to the amendment, two more than requisite, which would have rendered it unnecessary to include Ohio and New Jersey in the list. The following week after the certificate of Mr. Seward above mentioned was promulgated, Georgia proclaimed her approval, and thus the numerical

doubt was removed. Congress, in the mean time, the day next succeeding the certificate of Mr. Seward, had passed the following joint resolution for the purpose of removing the doubts expressed and intimated by that official: "Resolved, by the Senate (the House of Representatives concurring), That said Fourteenth Article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." This action on the part of Congress, for reasons stated when the ratification of the Thirteenth Article engaged attention, was an exceedingly proper course to pursue, and should be adopted in connection with the Thirteenth and Fifteenth amendments.

By force of this resolution, together with that of the subsequent action of Georgia, Secretary Seward, July 28, 1868, issued a second certificate, declaring the amendment absolutely and unqualifiedly an integral part of the national Constitution.

The legislatures of the States of Ohio and New Jersey having alleged their withdrawal from the ratification of the amendment, an examination of the legality of such action demands an incidental place in this discussion. It will receive it, but as the same question arises in the case of the Fifteenth amendment, such examination will be postponed until a consideration of the latter measure shall be assumed. Attention is now directed more particularly to the validity of the ratification as already announced.

The only question which arises in this connection is the legality of the political status of the insurrectionary States whose legislatures aided, in pursuance of the reconstruction act of March 2, 1867, in legalizing the amendment. These States, it will be remembered, had been once reconstructed under the measures of Presidents Lincoln and Johnson, the legislatures of a portion of them had helped to incorporate the Thirteenth amendment into our Constitution,

and yet the above-mentioned act declared their governments all illegal, with the exception of Tennessee, consigned them again to military rule, and ordered an entire reconstruction of their political organization. This declaration by Congress of the illegality of these State governments did not, of course, act retrospectively and overreach the dates whereat the legislatures thereof had ratified the Thirteenth amendment, and thus render their action in this respect invalid. These governments, in contemplation of law, in the absence of any retrospective clause, were not illegal until the act above named became a law of the land by virtue of the two-thirds vote of Congress which passed it over the President's veto. Taking all the facts into consideration as stated in this paragraph, however, and the question as to the exact time when, *in point of fact as contradistinguished from law*, the aforesaid governments, in the opinion of Congress, became tainted with illegality, is one not very easy of solution.

The main inquiry, however, as to the legality of the ratification of the Fourteenth amendment, as dependent upon the legal status of the reorganized insurrectionary States whose legislatures aided in such ratification, in the light of our discussion upon the preceding article of the Constitution is appreciable of proximate solution by mere statement of principles hereinbefore established. We have seen, in the connection above referred to, that the General Government derived its power to reconstruct the Southern States by virtue of its constitutional prerogative to enforce its legislation, to a certain extent, within State limits. This power of reconstruction, moreover, was seen to be measured by that clause of the Constitution which declares that the United States shall guarantee to every State a republican form of government. As to what constitutes a republican form of government, it was also shown that Congress and the executive form the proper and sole tribunal. The proposition was also main-

tained that such a reconstruction of the Southern States as met the approval of Congress and the executive gave to such States a government republican in form, and so put them in a legal position to ratify a constitutional amendment. These respective propositions were laid down and maintained without any qualification whatever.

In the light of these principles, then, without any qualification, the legality of the ratification of the amendment, as dependent upon the legal status of the Southern States whose legislatures aided therein, can in no way be asserted. Let us look at the facts. Ten insurrectionary States which had been once reconstructed under executive supervision, the legislatures of seven of which had aided in legalizing a change in our organic law, were declared to be existing under governments non-republican in form by a measure of Congress passed over the President's veto. In pursuance of this measure, moreover, all of these insurrectionary States whose legislatures finally aided in ratifying the amendment—namely, Georgia, North Carolina, South Carolina, Arkansas, Florida, Louisiana and Alabama—were declared to be reorganized under republican forms of government by another measure of Congress adopted over the disapproval of the executive. In other words, the governments of these States were adjudged non-republican, and subsequently republican in form, by the sole tribunal of Congress. That the question as to what constitutes a republican form of government in the several States is a political one, and legally comes before the joint tribunal of Congress and the executive, and that both of these propositions have been so declared by the Supreme Court of the United States, was shown in our discussion of the legality of the ratification of the Thirteenth amendment, and reiterated, in brief, in the next preceding paragraph. Reasoning from these established principles, moreover, the proposition was maintained in the prior connection above referred

to, and briefly reasserted in the paragraph next preceding, that such a reconstruction of the Southern States as met the approval of both Congress and the executive was a legal reconstruction—was a valid organization of a republican form of government therein—upon which basis the said States could legitimately aid in changing our organic law. In the present case, however, these principles are both apparently subverted. The States aiding in the ratification of the amendment in pursuance of the reconstruction act of March 2, 1867, were adjudged non-republican in form, denied representation in Congress, and again readjudged of a republican stamp and admitted to such representation, by a sole Congressional—and not a joint Congressional and executive—tribunal, as all our constitutional precedents appear to require.

At the present stage of this discussion the legality of the ratification of the amendment cannot be affirmed, and such legality, indeed, finds warrant, if at all, by force of a single principle of constitutional law. A little repetition of what has been before remarked will assist the present investigation. The General Government derives its right to reconstruct insurrectionary States by force of the constitutional power conferred thereon to exercise its authority within State limits. This authority, for the purposes of reconstruction, is measured by the constitutional provision that “the United States shall guarantee to every State in the Union a republican form of government.” The legitimate tribunal to *declare what State government is republican in form* is composed of Congress and the executive. Of all this there is no dispute. The last two propositions, though so intimately associated as to almost overreach each other, are somewhat different in character. The first constitutes an administrative, the second a discretionary, judicial power. The latter decides, the former acts. Let us here remember that the office of the executive is to enforce

the laws of Congress and maintain the supremacy of the Constitution, and that the duty of Congress is legislation. Let the constitutional words of the administrative power above cited in quotation-marks be now referred to. Keeping these in mind, can the President, as a sworn supporter of the Constitution, exercise this power alone? In cases of extended or uncontrollable insurrection, as commander-in-chief of the army and navy of the United States, undoubtedly. But how does the matter stand in respect to Congress? Can *it* represent the United States for this guarantee to the States of a republican government? Now, Congress can alone enact laws, and the latter, moreover, the executive is bound by his constitutional oath to enforce. The requisites of a law of the United States are either a measure of Congress approved by the President or one passed over his veto by a two-thirds vote of that body. Such a law, created in either of these forms, the executive *must* execute. The reconstruction act of March, 1867, whereunder the insurrectionary States ratified the Fourteenth amendment, became a law in the manner last above named, and President Johnson put the same in execution.

Turn, for a moment, from this administrative to the judicial power before referred to—namely, the adjudgment by the joint tribunal of Congress and the executive of what constitutes a republican form of government. Can the President exercise this power alone? Clearly not. In no phase is it solely an executive or military act, of which prerogatives he is alone possessed. Can Congress? This body, as before seen, can make a law of the land in spite of the executive, and the latter must enforce it. The all-important question here arises, Can a law of the land adjudge a certain form of government republican, although the Supreme Court of the United States has held that the tribunal for that purpose is Congress and the executive? Probably yes. The Supreme Court, in the above opinion,

merely decides that the question therein involved is purely a political and not a judicial one. It moreover defines the court which has legal jurisdiction of this political question. The court, moreover, wherein the jurisdiction of this political question is vested by the ruling of the Supreme Court is a *political tribunal*. How does this political tribunal act? The Constitution has decided—namely, by measures of Congress assuming the form of law, either with the President's approval or by a two-thirds vote of that body against his disapproval, which in both cases are put in execution by the executive arm.

We are thus led to the following proposition—namely, that the guarantee by the United States to the States of republican forms of government, and the adjudgment of the question as to what constitutes such a government—that a legal reconstruction of insurrectionary States for the purposes of ratifying an amendment to our Constitution, excepting the exercise of the war-prerogative of the President as to the active power above named—*merely intends the enforcement of legalized legislation*. Upon no other ground rests the validity of the ratification of the Fourteenth amendment. That end *was only obtained* by the enforcement of such legalized legislation—namely, the reconstruction act of Congress of March 2, 1867, and the acts amendatory thereof, which became laws over the President's vetoes, and were by him executed, and the subsequent acts of Congress which readmitted the insurrectionary States named in this discussion to their representation in Congress, which also became laws in the manner last above named, and which required no actual execution at the hands of the executive.

It will be noticed that the legality of the ratification of the Fourteenth stands upon a totally different ground from that of the Thirteenth amendment. In the last-named instance the insurrectionary States whose legislatures aided in

the adoption thereof were reconstructed under a mere executive policy, having only the passive approval of Congress, while in the present case such States were restored *by virtue of the enforcement of legalized legislation at the hands of the executive* where such enforcement was necessary, although such legislation did not meet his approval.

The constitutionality of the amendment itself is the subject which, logically speaking, next requires consideration. The only important point here in issue is, whether the right of suffrage in the States can be in any way interfered with by means of a constitutional amendment. The Fourteenth amendment, as will be remembered, assumes such interference only in a negative and minatory form. The Fifteenth amendment, however, although also of a negative character, tends directly to an extension of the elective franchise. The first contemplates a means of punishment for a denial of the privilege to certain classes (the prior slave population); the second declares that such classes shall not be denied the same, except for crime, under any circumstances whatever. A full discussion of the constitutionality of such a measure pertains more properly to the consideration of the Fifteenth amendment, and it is therefore postponed until that article of organic law shall engage attention.

In examining the amendment itself, and tracing the record of events which has been made since its promulgation for the resulting effects of this change in our Constitution upon community, two or three points of peculiar interest challenge our acquaintance. The first that will be noticed is the claim which has been made that the Fourteenth and Fifteenth amendments establish the principle of woman suffrage. That the claim is purely ephemeral a brief examination will abundantly prove. As the Fifteenth amendment has not been reached as yet in this discussion, the present examination of this topic may seem an anticipation

of subject-matter which is unwarranted. The arguments both pro and con, however, spring almost from the first-named article, and as an understanding of the last-named amendment, in the abstract, is not an absolute prerequisite in this connection, the alleged doctrine may be here disposed of without any breach of logical propriety.

The only portions of the two amendments which refer, either directly or indirectly, to the question of suffrage in the abstract is the second section of the Fourteenth and the first section of the Fifteenth Article, as will be seen by reference thereto.

The first section of the Fourteenth Article simply decrees *citizenship*, forbids the abridgment of its privileges or immunities, reiterates the constitutional warrant as to deprivation of life, liberty or property without due process of law, and prohibits the denial to any person of the equal protection of the laws.

The second apportions Representatives among the States, and provides a means of punishment for denying, in any State, the right of certain *male* inhabitants to vote at any State or United States election.

The Fifteenth amendment is substantially as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude."

The fundamental rule of statutory interpretation, and one which overrides all others, is to seek the intention of the legislators who framed the law. This intention as to the first article of the Fourteenth amendment is a matter of history, and not surrounded with doubt. After the abolition of slavery by the Thirteenth amendment, Congress passed a measure called the civil rights bill, for the purpose of bestowing *citizenship* upon the colored population. The validity of this measure was questioned. The point was

raised that the end sought by the civil rights bill was legally attainable only by a constitutional amendment, and the first section of the Fourteenth Article (see Appendix) was provided merely to validate the bill above named. This fact appeared not only in private political discussions, but the debates in Congress on the amendment fully show that this was the intention of that body.

The section last above named in the outset decrees citizenship to all persons born or naturalized in the United States; and the primal claim of the woman-suffrage advocates is that *citizenship implies suffrage*. It does not, nor never has, under this or any other form of government. The question is a *res adjudicata* even of the common law of England and the United States. As such, the elements of citizenship have been defined by Blackstone and other English, and Kent and other American, law-writers, and as such it has been subsequently reiterated and reaffirmed over and over again by English and American tribunals; namely, the fundamental elements and sole essence of citizenship are the rights of personal liberty, personal security and the right of property. These three rights, moreover, are all that are embraced in the civil rights bill, which the first section of the Fourteenth amendment was designed to supplement. This very section of this amendment, moreover, proclaims, in almost so many words, that the *citizenship which it decrees means exactly the possession of these three rights, and no more*; for after the declaration of such citizenship it immediately says—by way of protecting what it has just decreed—by way of defining the general right it has just guaranteed: “Nor shall any State deprive any person of life, liberty, or property” (that is, citizenship) “without due process of law.” Every child but a moment born is by the law of the land just as much a citizen of the United States as a man who has voted for every President thereof. In that state, and through his legal infancy, before the

period when an express statute declares that he may be endowed with the distinct right of suffrage, he is just as much protected by law in the rights of life, liberty and property—the rights of citizenship—as at any time thereafter. Citizenship, indeed, by force of our organic municipal and adjudicated code, is the normal condition of every person, man, woman or child, and by reason of precisely the same force it means the rights of personal liberty, personal security and the right of property. The only question on this first claim of the advocates of the doctrine that citizenship implies suffrage is, whether the principles of the common law of England, which have existed for five hundred years, been adopted into our jurisprudence, reaffirmed by law-writers and tribunals on both sides of the Atlantic, shall give way to the opinion of a class whose leaders are a woman who claims to be the mundane abode of the spirit of Demosthenes, and a member of the House of Representatives, the basis of whose political principles is his own individual advancement.

Passing from the first to the second section of the Fourteenth amendment, the only one which speaks directly upon suffrage, an examination thereof shows its provisions to be merely punitive. It provides a means of punishment for States who shall deny the right of suffrage to a certain portion of its population. But if suffrage is impliedly granted in the bestowal of citizenship in the first section, as the advocates of the doctrine claim—and if it were so granted as an amendment to our national Constitution, *State legislation could not deny it to any class—why have a second section in immediate connection therewith*, providing a means of punishment *for every State which should deny such right of suffrage to a portion of its inhabitants?* If suffrage is granted *by the national Constitution*, State legislation cannot take it away; and if so granted by the first section of the Fourteenth amendment, why have the second one, provid-

ing punishment for the withholding of a right by a State *which is already given beyond the power of such State to either refuse or withdraw?* Moreover, if the first section of the Fourteenth amendment confers suffrage upon *all persons* born or naturalized in the United States by the bestowal of citizenship, it reaches all males in its operation as well as women. But the second section only provides punishment for a State which denies suffrage to a certain portion of its "*male*" population; therefore, according to the advocates of the doctrine, either the first section of the article enfranchises *women alone* in conferring citizenship upon "all persons born or naturalized in the United States," or the second section, by providing punishment for a State which denies the elective franchise to a portion of its "*male*" population, assumes either that women are not included in the operation of the amendment at all, or that a State may deny them the right of suffrage without coming within the punitive provisions of the article. In any way we may view the question, the second section of the Fourteenth Article, according to the advocates of women suffrage under the Constitution, is not only unnecessary, but absolutely suicidal.

Looking now to the Fifteenth amendment, a moment's consideration thereof for the purposes of the present discussion will amply suffice. The intention of the legislators who framed this article of our organic law is no less a matter of history than is the case of the one which preceded it. The penalties of the Fourteenth amendment which certain States would lay themselves liable to incur by denying their colored population the right of suffrage were not sufficient to deter such States from the adoption of such a policy. The right of suffrage was denied the blacks throughout the South, and the incidental penalties endured. In order to give to the Southern blacks what the punitive provisions of the Fourteenth amendment failed to secure

for them—namely, enfranchisement—the Fifteenth Article was established. The whole gist of the Congressional and State legislative debates thereon expressly declares that this was the intention, the scope, the purport of the article. Remembering that citizenship does not imply enfranchisement, what does the Fifteenth amendment prescribe? “The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.” That is, stating it affirmatively so far as this article is concerned, any State in the Union, or the United States, may deny or abridge the right of citizens to vote except on account of race, color or previous condition of servitude. Now, unless women are a distinct race, or unless the element of womanhood constitutes color, or unless women as a class have been held in a *prior* condition of servitude (which last can hardly be argued, save perhaps in the case of marriage), the right of suffrage is not conferred upon them by any words of the Fifteenth amendment. The entire argument, indeed, is based upon the assertion that the decreal of citizenship in the first section of the Fourteenth Article impliedly bestows the right to exercise the elective franchise; and this proposition has been proved to have no foundation in either our political or constitutional law, and to be in direct contravention of all abstract, fundamental principles of citizenship. The general tenor of the original Constitution, in fact, refutes the theory. Citizenship as therein regarded is purely a possession of *civil* rights, and by the incorporation of the substance of the English bill of rights into that instrument such citizenship is virtually defined to be the right of protection to life, liberty and property. Suffrage, on the other hand, was viewed by the framers of our Constitution as a distinct *political* right, separated entirely from citizenship; for while the latter was considered as the normal condition of the free native population by that instrument,

the former was impliedly left to the judgment and supervision of the several States.

The opinions advanced in this discussion have all been recently held legitimate and consistent with established principle and precedent, in suits brought under these amendments to test the validity of the woman-suffrage doctrine, by the Supreme Court of the District of Columbia, and one of the most eminent jurists of Pennsylvania, Judge Sharswood, as well as Judge Jameson of Illinois, and have not been denied by any American jurist except Judge Underwood of Virginia, and his was a mere extra-judicial opinion, not given in the course of a legal proceeding.

The next topic which presses itself upon our attention in this discussion of the resulting effect of the Fourteenth amendment upon the community is in reference to the status, under the operation of this article of our organic law, of what are in a general way termed "monopolies." This term, however, must be regarded in a very general sense, for the grant of exclusive privileges to corporations and individuals by our State and United States Governments, to which the term "monopolies" is somewhat loosely applied, differs materially from the old English statute of monopolies whereby such exclusive grants were first established. In the latter case such grants were absolute and unqualified, while in the former they are both relative and conditioned. The difference may be best seen by illustration. The English statute, for instance, would vest in a certain individual, class or guild the exclusive right of manufacturing a peculiar article or pursuing a particular industry *under all possible forms*, while the present system vests such an exclusive right *under only one form*, leaving the same result to be obtained by different methods, free and open to any who may have the ability to devise them. The term "monopolies," then, in the general sense in which it is now used, is intended to cover both franchises

and patents; whereas in its original legal signification it referred alone to grants of the last-named character, and that in the manner above described.

Under the operation of the Fourteenth amendment the principle has been asserted that such exclusive grants tend to a subversion of the first section of this article. The foundation of this claim may be best seen in the narration of a very important case now awaiting final adjudication. Prior to the year 1869 the slaughter-houses of New Orleans were in very many of the most densely-populated portions of the city. Under the declared intention of promoting the sanitary condition of New Orleans, and by virtue of the State right to exercise police regulations within State limits, the legislature of Louisiana incorporated the Crescent City Live-Stock Landing and Slaughtering Company. The act of incorporation conferred upon the company an exclusive right to prosecute the business within certain limits for twenty-five years, discontinued all other yards, slaughter-houses and stock-landings, and gave said company the right to levy a stated assessment upon all cattle slaughtered at their establishments. A number of suits were brought by injured parties to test the legality of the monopoly, and the Supreme Court of the State sustained the same. Upon appeal to the United States Circuit, however, Justices Bradley and Woods presiding, the grant by the legislature of Louisiana was declared unconstitutional, by reason of the fact that the following provision of the Fourteenth amendment was violated thereby—namely: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” The gist of the opinion is, that while the immunities and privileges of citizens with which the Fourteenth amendment forbids inter-

ference are somewhat inappreciable of exact definition, the right to follow any legal vocation is certainly one of them ; that such a right, indeed, is the mere right of labor ; and that, as the act of the Louisiana legislature deprived certain butchers of New Orleans of this right, the same was unconstitutional. Anticipating the objection which would be raised to this opinion by holders of patents and franchises, the court remarked, *obiter dicta*, that the former were valid, because to holders thereof "society only gives the temporary use of that which, without them, it would not have had the benefit of, as a consideration of that benefit and to encourage others to make use of their powers." In reference to the latter, the court also remarked upon their validity, on the ground that the privileges thus conferred could not be exercised by individuals to any extent except through the means of corporate associations established by legislative act, and that "society obtains a consideration for the grant of these franchises in the investment of large amounts of capital in public improvements which are required for the development of the country and its resources."

The New York *Nation*, in its issue of December 1, 1870, in its usual able and forcible manner (to whose article we are indebted for the foregoing analysis of the case), combats this opinion of the United States Court, and pronounces it unsound. The limits of this treatise will not permit an extended discussion of this case or the topic to which it belongs. The statement is ventured, however, that the *conclusion* arrived at by the court is correct, although its reasoning is, with all due deference, if we may be allowed the remark, somewhat superficial, and its premises are hardly tenable. The act of the Louisiana legislature appears to be unconstitutional for a very plain and simple reason, but not by reason of a *particular* violation of the Fourteenth amendment. The Constitution guaran-

tees the right of property to all persons within the limits of the United States. This guarantee of the right of property, moreover, has been invariably considered by judicial authority to preclude the existence of *absolute and unqualified monopolies*. The general spirit and genius of our institutions is utterly opposed to them. By "absolute and unqualified monopolies" is intended such exclusive grants as were conferred by the original English statute of monopolies—namely, an exclusive privilege to exercise a particular vocation or industry *in all possible forms*. And this is precisely such a privilege as the legislature of Louisiana conferred upon the company before named. It not only gave a corporation a right to prosecute not a particular but a very general industry *by one special, but every possible means*. If the act of the Louisiana legislature had incorporated the company with the exclusive right of slaughtering cattle within certain districts, leaving the same vocation open for prosecution by other parties, who could locate *in certain other districts which would not jeopardize the sanitary condition of the city*, with a provision, if it seemed advisable, *that such other parties must also become incorporated*, the measure would have been sound and constitutional, for such a grant would have been a *relative and conditioned monopoly*, in accordance with our institutions and organic law, and not an *absolute and unqualified* one, in pursuance of the old English statute. The force of this distinction was intimated in the outset, and the absence of it in the *Nation's* article before referred to constitutes, with all the respect to which the character of the authority is entitled, its vulnerable point.

This distinction, moreover, embraces every case which may arise under the Fourteenth amendment in reference to the prejudice thereby of the rights of holders of patents and franchises. The operation of the article merely prohibits, if it prohibits anything in this direction, and that

impliedly, the granting of absolute and unqualified monopolies in distinction from relative and conditioned ones.

If the Louisiana case comes before the Supreme Court, the *conclusion* of the lower tribunal might properly be sustained, though not the particular premises upon which the same is founded.

Briefly to recapitulate, the result of the operation of the amendment is—

First. To bestow citizenship upon all persons born or naturalized in the United States, forbidding by any State the abridgment of the privileges of such citizenship, the deprivation of life, liberty or property without due process of law, the denial of the protection of State laws to any person therein, and effecting monopolies as already described.

Second. To apportion Representatives among the several States, and punish States who shall deny any male inhabitant, twenty-one years of age, the right to vote at any State or United States election, except for crime, by a proportionate diminution of its representation in Congress.

Third. Imposes disabilities upon certain classes of the South, with privilege of removal thereof by a two-thirds vote of Congress.

Fourth. Affirms the validity of the public debt, denies that of the Confederate one, forbids the assumption of the latter by any State or the United States, as well as payment for emancipated slaves.

A criticism of the merits of the amendment, in the abstract, is now logically but not conveniently in order. The Fourteenth Article initiates in a minatory form a scheme which the Fifteenth carries to a final execution. The defects of the one are the defects of the other, and as a discussion of the same in this connection would require repetition at the close of this chapter, such an examination will be to that time and place deferred.

THE FIFTEENTH AMENDMENT.

The causes and origin of the Fifteenth amendment have incidentally appeared in the preceding pages of the present Chapter. The Fourteenth Article of our organic law, as already stated, did not, by a direct affirmative grant, confer upon the colored race the right of suffrage. It aimed to accomplish that end in an indirect manner, by imposing political proscription upon all States which should withhold the right from their colored population. An absolute enfranchisement of the colored masses at this juncture the public sentiment of the nation condemned instead of indorsed. The scheme of the Fourteenth amendment in respect to suffrage proved not only inadequate, but in most cases entirely inoperative. The Southern States, for the most part, left the blacks in their former condition of disfranchisement, and submitted to the consequent political penalty, as what seemed to them the lesser evil. To actually establish what the Fourteenth Article, by its punitive provisions, failed to secure—namely, the right of suffrage for the colored race—the Fifteenth amendment was devised and promulgated. This is the only end which this article has in view. It is in a negative form—merely prohibits the denial of the right to vote to any citizen on account of race, color or previous condition of servitude. For all causes, therefore, except the three above named, the elective franchise, so far as this article is concerned, may be still withheld. The text of the amendment is as follows:

“SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.

“SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.”

At the opening of Congress in December, 1868, various

resolutions embracing the substance of the amendment as above written were presented to that body for adoption, and after about the usual amount of debate, reference and conference, a resolution proposing the present article for ratification passed the Senate and House February 25, 1869, and was submitted immediately thereafter to the legislatures of the several States. March 30, 1870, the ratification of the amendment was certified by the State Department, and the same declared valid, for all intents and purposes, as an integral part of our Constitution.

As to the legality of the ratification of this amendment by the States, argument is entirely unnecessary. Such legality depends wholly upon the status of the late insurrectionary States whose legislatures aided therein ; and as the political relations of these States to the Union were, in every respect, of a similar character as when the Thirteenth Article was promulgated, the discussion upon this point, as seen in the examination of the last-named amendment, is both pertinent and adequate in this connection, and may be referred to if occasion requires. An additional word of comment upon one or two points, however, may be deemed necessary for the sake of completeness.

At the time of the submission of the amendment to the legislatures of the several States for ratification, although all of the lately insurrectionary ones had been re-reconstructed under the Congressional policy of March 2, 1867, Virginia, Mississippi, Texas and Georgia had not been admitted to their representation in Congress. That body consequently passed an act making it a prerequisite for the admission of such representation that the legislatures of the States above named should ratify the proposed amendment, which condition was complied with. At the time of the promulgation of this article, moreover, the legislature of New York, which State had been counted in the necessary three-fourths, alleged a withdrawal of its assent thereto ; but as Georgia,

through its legislature, had announced its approval subsequent to this action of New York, and after the necessary three-fourths had been obtained, barring the doubt in reference to the latter, this possible numerical taint upon the validity of the amendment was thereby removed. There was also a doubt of prior origin in reference to the ratification of the legislature of New York. That body neglected to instruct the governor of the State to forward the usual statement of its ratification of the amendment to Washington, as had been the custom in former cases of this character, and the same was received by the State Department from another official. The opponents of the article raised the point that the transmission thereof to the national authorities by the governor was an essential element of the legal ratification of the amendment by the legislature. The objection, as it was everywhere regarded by intelligent and non-partisan members of both parties, was a sheer absurdity, and is answered by a mere statement of a simple and well-defined principle of legal science—namely, a discretionary judicial power must be always exercised by the party in whom the law has vested the same, while the performance of ministerial duties is valid at the hands of any agency acting for the time being in that particular capacity. Comment is unnecessary.

There was apparent difficulty, in the outset, in the case of Indiana. When the amendment came before the legislature of that State for ratification, the Democratic members of the House of Representatives thereof resigned with a view of destroying an official quorum, and so prevent action upon the amendment. The number of Representatives before the resignation above named was one hundred and one. The number resigning was forty-one, thus leaving sixty in their official positions. Fifty-seven members were present when the amendment was ratified. The constitution of the State requires two-thirds of the House to

be present for purposes of legislation, which, before the resignation of the Democratic members, would have been sixty-seven. As their resignation reduced the original number below this (sixty-seven), the faction argued that the ratification was illegal. The Speaker's ruling upon the vote was as follows—namely: “For ordinary legislation the State constitution prescribes that two-thirds of the House (or sixty-seven members) constitute a quorum, but it does not define what number of members, more than a simple majority of the legislature, shall be sufficient to act upon a proposed amendment to the United States Constitution. The amendment is therefore adopted.” Unless the constitution of the State fixes the House of Representatives at an arbitrary number, the validity of the above action rests upon other grounds. Members cannot resign *and still be members*; and when the forty-one Democrats *resigned* (not merely absented themselves), unless the constitution of the State gives a *numerical* definition of the House, the remaining sixty constituted the entire branch of the legislature, and all but three of this sixty were present on the occasion—not only a majority, but more even than two-thirds or three-fourths. Upon the ratification of the amendment by the legislature of Georgia, however—which occurred, as hereinbefore stated, after the necessary three-fourths had been obtained—the doubt as to New York having been removed, Indiana was not needed to make up the necessary number of twenty-nine States; so this point is not enveloped in uncertainty.

When the Fourteenth amendment was under consideration it appeared that the legislatures of New Jersey and Ohio alleged a withdrawal of their ratification of that article. In the present instance, moreover, it has been seen that the legislature of New York assumed a similar position. The soundness of the doctrine thereby alleged will now receive examination, when the constitutionality of the

amendment will form the subject of discussion. The analysis of the question is very simple, and the same will therefore not require extended comment.

The subject-matter upon which the legislature of a State assumes to act in an alleged withdrawal, as above stated, is a proposed article to the Constitution of the United States. The question is here pertinent, From what source does a State legislature derive its power to take action upon such subject-matters? The answer furnishes a key to a solution of the whole inquiry: It derives such power from the Constitution—from the organic law of the nation—and the extent of its power in this direction is consequently measured by the words of our national charter whereby such power is conferred. These are: Proposed amendments “shall be valid to all intents and purposes, as a part of the Constitution, when ratified by the legislatures of three-fourths of the several States,” etc. etc. The above is the only clause of the Constitution which gives a warrant for action of State legislatures upon proposed amendments thereto. Such action, as already stated, must be confined within the scope of the power raised thereby. Now, this power is an affirmative and not a negative one, except in the first instance, and that impliedly. It provides for affirmation, for ratification expressly, *and thereby, impliedly, for rejection in the first instance*; but it does not authorize, either expressly or impliedly, *a negation in the second instance—that is, rescision*. The right of rejection in the first instance is necessarily implied in the right to vote upon the proposed amendment conferred by the Constitution upon the State legislature, for the vote may be *aye* or *no*; but beyond this upon this point the instrument speaks not, either in express words or by implication. Too much force cannot be laid upon the thought just expressed. Rejection is always implied in a power of affirmation, but rescision never. Affirmation and rejection are component parts of *one stage*

of parliamentary action. Recision is an entirely separate element of such action, *and one remove in advance of an affirmative or rejective vote*. The term recision must not, moreover, be confounded with rejection or negation. The latter intend a *primal* conclusion upon any subject-matter—the former a *second* conclusion, whereby such primal one is reversed. Applying the most liberal interpretation and construction possible to the constitutional clause above cited, no power of *recision* lies hid in the words thereof. It is a simple express power of affirmation, of ratification, carrying with it, impliedly, the additional one of a simple negative in the first instance—the mere right of rejection.

Such an alleged withdrawal, as already stated, as the legislatures of Ohio, New York and New Jersey assumed to make, is the baldest kind of brainless parliamentary action, and reflects anything but credit upon the intelligence of the deliberative bodies above named.

Look, for a moment, at the full effect which would result from the operation of this alleged power of recision which its claimants hold they are entitled to exercise. Where is the limit to be placed upon such action? There is no bound set upon it by the United States or any State constitution; therefore it may be pursued to any and every possible extent to which the whim or caprice of any particular legislature of a particular period may see fit to commit itself. In the absence of an express bar, there is no point beyond which this power of recision may not be invoked. What is to hinder, then, a State legislature from withdrawing its ratification of an amendment after promulgation by the national authorities as well as before? Clearly nothing. Admit this right of recision, then, upon the basis of its claimants, and there is not one of the fifteen amendments to our Constitution which cannot, even at this late day, be set aside by this abortive species of legislative action on the part of the States.

Under the power to act upon proposed amendments to the national Constitution conferred upon the State legislatures by that instrument, the ultimate boundary of which power is the implied right of rejection—negation—in the first instance, a ratification of any such amendment by a particular legislature vests a right in the people of the United States, for the withdrawal of which the sanction of constitutional or statute law or precedent is sought in vain. The only method of disposing of an objectionable amendment in a legal and constitutional form is to again amend.

A discussion of the constitutionality of the Fifteenth, and thereby of the Fourteenth amendment, in so far as the latter bears upon the subject of suffrage, is now in order. Many of the principles advanced in the examination of the Thirteenth Article upon this point are pertinent in this connection. In the light of these principles the inquiry is, Is an amendment to the national Constitution, whereby the right of suffrage in the several States is interfered with, constitutionally valid? Referring to the discussion above named, it was seen in that connection that the powers granted by the Constitution are special, general and implied; that upon the same subject-matter the first override the second to the extent which such special powers operate thereon; that the second override the third in the same degree under the same relative conditions; and that the same rules apply where the sanction of constitutional authority is invoked to legalize the exercise of some very general power for which it is difficult to find authority, in any of the three forms above named, in the letter or spirit of our organic law. For a fuller statement of these principles reference may be had to the discussion already noticed. Recurring still further to the same portion of this treatise, it is seen that the sole powers declared in the Constitution for amendment thereof are found in the Fifth Article, and in the first

and fourth clauses of the ninth section of the First Article—namely:

“ARTICLE V.

“The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand and eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the First Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.”

Article I., Section 9, clauses first and fourth.

First clause: “The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.”

Fourth clause: “No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.”

Keeping in mind the line of discussion upon this point as connected with the Thirteenth Article, the words of the Fifth Article above named, down to the word “Provided,” constitute a general power of amendment, while the remaining portion of said article, together with the clauses

of the first one which follow it, forms a special power of amendment, and supersedes the general power just stated to the extent of its operation. How does this special power limit the general power of amendment as to suffrage? It places a perpetual inhibition upon an amendment which shall deprive any State, without its consent, of its equal suffrage in the Senate. The Fourteenth and Fifteenth amendments trench upon this inhibition in no single particular, and thus far, at least, their constitutionality is not open to question.

In this connection, however, the second section of the First Article is cited to combat our position—namely :

Second Section of Article I.

“The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.”

Here is a general power, containing also an implied one, which leaves the regulation of the privilege of suffrage to the several States; *and how shall this general power of suffrage be superseded by another general power of amendment?* Allusion to the same discussion already cited recalls the principle asserted by Chief-Justice Marshall of the Supreme Court in *Gibbons vs. Ogden*, that “every power granted by the Constitution is complete in itself, may be exercised to its utmost extent, and acknowledges no limitation except that which is written in the Constitution.” That is, every *general* power of the Constitution may be exercised to its fullest extent unless some *special* power upon the same subject-matter steps in and supersedes it. The power in reference to suffrage, above named, is a general one; so is the power of amendment now under discussion. Either may be exercised *ad infinitum*, barring inhibitions

of special powers in the same direction. The only inhibition of this sort in this connection is that which prohibits an amendment which shall deny a State, without its consent, its equal suffrage in the Senate.

Again, the Tenth Article is invoked to defeat the legality of these amendments—namely :

“ARTICLE X.

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The power over suffrage is not delegated to the United States by the Constitution, it is true, but the general power of amendment is ; and the same may be exercised indefinitely, except as it shall run counter to inhibitions thereon in the shape of special powers, and defeat the operation of one abstract principle underlying the whole Constitution, which will be noticed in the next particular.

Intemperate advocates of these amendments have claimed that the power over suffrage was left *directly* with the General Government by our organic law. Nothing could be farther from the truth. The infant colonies that were formed under the auspices of the mother-country regulated the elective franchise as seemed best for the peculiar conditions of each respective company, and the same held true in the case of the States under the Confederation. As to the status of suffrage under the present Constitution, the matter is one of history as well as law. In the convention which framed the Constitution, when the subject of suffrage engrossed the attention of that body, two schemes of government for the elective franchise were presented for adoption. The first contemplated a uniform basis of suffrage throughout the entire country—that is, suffrage as a national and not as a State institution. The second had for its object a continuance of the plan which had existed under the Colo-

nial and Confederate Governments—namely, the right of the several States to regulate the elective franchise within their respective limits. The latter, although the former was advocated by many of the best minds of the convention, was approved upon the final vote. It was one of the concessions made by the federal to the democratic element, in order to release itself from the suicidal sway of the Confederation. That the power over suffrage was left to the several States by the Constitution was expressly asserted, indeed, in the platform of the Chicago Convention which nominated General Grant for the presidency; and when the Fourteenth amendment was proposed in Congress the fact was cited by the Democratic members as an estoppel upon the Republican party in its proposed action of framing that article. The point is not particularly pertinent, as the constitutionality of the amendments rests upon other grounds, already stated.

As to the ultimate extent to which the power of amendment may be exercised, a little additional comment may not be wearisome. The Constitution of the United States contemplates a republican form of government. The entire spirit and genius of our institutions is stamped with its impress, the debates of the convention from which emanated our primal organic code, as well as the letter of the instrument itself, give indisputable evidence of this intention, and every amendment thereto has sought to extend the benefits and perfect the workings of a republican system. To attempt by a constitutional amendment to absolutely change our form of government would therefore be regarded by the people of this republic as almost a sacrilege; and such a measure, moreover, would find no warrant in the precedents and principles of our constitutional law. The British Parliament undoubtedly has authority to entirely remodel the government of Great Britain by a simple act of legislation, as the constitution, the organic

law thereof, consists *entirely of acts of Parliament and sundry and quasi bills of rights allowed, at the instance of Parliament*, by the Crown. The fundamental law of the English realm, in other words, is a mere creature of Parliament, and by it may be either abridged, extended, amended or entirely abrogated. Not so with the United States. Our Government is a creation of the *people*, and not of Congress; and while the former alone—if the right of a numerical majority to rule is conceded as an abstract principle of the science of government—may legally decide to change our form of government by an *abrogation* of our present Constitution, neither the one nor the other, separately or conjointly, can secure such an end by an *amendment* thereto. Such a course would be a mere attempt to abolish republican institutions under an authority alleged to be derived from a constitution which impliedly declares that republican institutions never shall be abolished, and would not only be a betrayal of the most sacred trust, but an ignorant abuse of the hermeneutical principles of both legal and political science.

The general power of amendment to our Constitution, then, may be exercised to the fullest possible extent so long as it neither infringes upon the inhibition of a special power, like that which prohibits a denial to the States of their equal suffrage in the Senate without their consent, nor tends to subvert or overthrow our present republican form of government.

This latter point has been dwelt upon somewhat at length, as an honorable member of the United States Senate, at the time the proposed Fourteenth amendment was discussed by that body, hazarded the statement that an amendment to the Constitution might absolutely and legally change the character of the General Government. The position was a grave departure from law.

To conclude this examination of the constitutional va-

lidity of the Fourteenth and Fifteenth amendments, the same may be undoubtedly affirmed. The discussion has been close and seemingly curtailed. There was no necessity for its being otherwise, as the various points were elaborated in detail when the Thirteenth Article engaged attention, to which reference may be had for particulars.

In respect to the results effected by the operation of the Fifteenth amendment very little need be said, except in one particular. The article merely forbids the political proscription of any male citizen of twenty-one years of age by the States or the United States for three causes—race, color or prior condition of servitude. For all other causes, so far as the operation of the Fifteenth Article alone is concerned, suffrage may be legally restricted, the elective franchise legally denied to any citizen, throughout the several States, in accordance with their own peculiar tenets. It will be remembered, however, in this connection, that for a denial of the right to vote to such male citizens of twenty-one years of age as the Fifteenth Article aims to enfranchise, and to all male citizens of that age in fact, except criminals, the Fourteenth amendment imposes a penalty of a relative diminution of the Congressional representation of any and every State that enforces such restriction. In other words, the Fourteenth Article provides a means of punishment for the political proscription of certain male citizens who have attained their majority, and the Fifteenth amendment declares such proscription shall not exist in respect to our prior slave population. The consequences are—first, a State may still illegally deny the elective franchise to citizens who come within the purview of these amendments; and, second, notwithstanding such proscription, the citizens contemplated by the Fifteenth Article, at least, may vote by reason of the paramount authority of the same as conferred by the General Government. The question is then pertinent, If a State proscribes certain of its citizens in violation of the

Fifteenth amendment, shall the penalties of the Fourteenth Article be imposed, *notwithstanding the proscribed citizens, by virtue of the paramount authority of the Fifteenth amendment, cast their ballots in spite of such State proscription?* In other words, Shall a State proscription, *rendered perfectly powerless by the Fifteenth Article*, suffer the punishment provided by the Fourteenth amendment, or does the Fifteenth Article, in annulling such proscription, repeal these punitive provisions of the preceding one? As restrictions upon the privilege of exercising the elective franchise, contrary to the letter of the Fourteenth and Fifteenth Articles, still exist in several of the State constitutions, a solution of this problem makes quite a material difference in the numerical character of the House of Representatives.

The alternative, that the Fifteenth Article repealed the punitive provisions of the preceding one, was insisted upon by some of the States whose constitutions were repugnant to these new provisions of our organic law. The opposite opinion has, however, obtained precedence, and in the recent apportionment of Representatives by Congress under the census of 1870, a section of the act provides that for all future proscription by the States in violation of the Fourteenth and Fifteenth Articles the penalties of the first-named amendment shall be enforced. This rule of apportionment is undoubtedly correct.

The grounds of the conclusion above stated, which indeed was the only one that could be arrived at without doing violence to the plainest rules of legal construction, are substantially as follows: The Fifteenth amendment in no way repeals the punitive provisions of the Fourteenth Article by express words. If there is any such repeal, therefore, it is by implication. A repeal by implication is never allowed unless the prior statute is so repugnant to the subsequent one that both cannot stand together. There is no such clash in the practical workings of these two

articles. Both may be enforced to the fullest extent, and result in no contradiction of one by the other. Moreover, the Fifteenth Article does not literally abolish—although it ultimately renders powerless—those portions of State organic law which are in opposition thereto. The measures of Congress which have been adopted for the so-called enforcement of this article cannot be legally construed to contemplate that the organic or statute law of any State is paramount thereto. That would be a surrender of the supremacy of the national Constitution as established by express words of that charter. The measures in question are mere agencies for the prevention of delay which State residents would suffer in establishing the unconstitutionality of local law which might contravene the provisions of the amendment. The article, abstractly speaking, contains its own coercive power, and legislation therefor is bounded by the limits above stated.

The concluding remarks, not only of this immediate subject of discussion, but of the present chapter, are now in order. As announced in the outset, they will consist in a criticism of the merits of the last two articles of our organic law. While the Thirteenth Article of the Constitution had for its foundation the plainest principles of reason and justice, and was, moreover, a stroke of politic legislation, the Fourteenth and Fifteenth amendments, so far as they affect the elective franchise, are not only unreasonable and unjust—they are evidences of an immature policy and a superficial statesmanship. The *intention* of these amendments is in no way vulnerable. Their *conception* is alone at fault. They contemplate the establishment of justice and equality in respect to the dearest boon of the American people, but they sadly mistake the *means* for the attainment of the desired end. As remarked in a prior stage of this discussion, the period of the proposal of these changes in our organic law was peculiarly available for placing the

privilege of the elective franchise—not the abstract right, for such a right suffrage is not—upon a national basis, and one, moreover, which would not only command the respect of all classes and conditions of men, and stamp the position of an elector as one to be earnestly desired and sought after on account of its elevating and ennobling character, but a basis, moreover, in respect to which the necessity of change could scarce ever exist. What is government, a voice in the direction of which the Fourteenth and Fifteenth amendments have given to every male citizen of the United States, not guilty of crime, *that has attained his majority*? Let Burke answer: “Government has been deemed a practical thing, made for the happiness of mankind, and not to furnish out a spectacle of uniformity to gratify the schemes of visionary politicians.” Can the proper management and control of an institution which indeed does have for its legitimate end “the happiness of mankind”—strangely as the definition may sound to Congressional packers of every political gathering, from a village caucus up to a State legislature—can such a task be deemed appreciable by every male citizen simply because he has become twenty-one years of age, *without any regard to collateral circumstances*? It would seem to require but a moment of calm and sober reflection to induce a negative response. The mere element of age, strictly speaking, is the last requisite which enters into the component parts of a well-qualified elector. True it is that an arbitrary line must of necessity be drawn in this direction before a man shall be allowed the privilege to vote, but the constitutional assertion of the United States that age is the first, last and only requisite of a legitimate electoral estate is an absolute burlesque upon civilization and a libel upon the science and aims of government. Call it what we will, either sin or misfortune, the grand defect of our suffragan policy—the cancer which is gnawing its way to the very vitals of American institu-

tions—is that the corner-stone thereof is *Ignorance*. The Fourteenth and Fifteenth amendments, indeed, offer a premium upon ignorance, and put a lie in the mouth of the General Government. Through these measures the United States, the American republic—the nation which proclaims to the world that it has established and is perfecting an institution of government by means of knowledge wrung from the experience of past ages by its scholars and statesmen, whose names upon our necrological record are indeed a galaxy of stars,—this nation, with this its boast of intelligence as to governmental knowledge, issues an invitation which indeed is broad: “Ho, all ye that thirst for political power, of whatever race, tongue, nation or people, irrespective of antecedent conditions, minding not your character in any respect, except as to crime—whether a savañ or a boor, whether cultured or illiterate, even to absolute ignorance of the alphabet,—come ye, convince us that you are twenty-one years of age and were either born or naturalized in the United States, and take an *equal* share in maintaining and perfecting the institutions founded by Hamilton, Jefferson, Franklin, Randolph and Washington, saved to the nineteenth century by the genius of Webster, Clay and their compatriots, and defended to the present moment at the cost of a million and a half of lives and over ten thousand millions of treasure!”

There is doubtless ample warrant for the statement that, as a general rule, ignorance has its price, while intelligence has not. There are, of course, exceptions to both corollaries of the proposition; still, relatively speaking, they are few in number. Proof of the assertion is afforded, indeed, in the experience of this country in regard to suffrage. It would be a very difficult if not absolutely impossible task to point to any extended instance of the purchase of votes from our intelligent enfranchised population. It is a sacrifice of manhood which nothing but ignorance, and the at-

tendant inability to comprehend the real turpitude of the act, will for a moment contemplate ; but at the immediate period of the proposal and ratification of these amendments a glaring exhibition of the evil results of an unrestricted suffrage in this direction was attracting the attention of our entire country and of Europe, and still thwarts the efforts put forth for its removal. The State of New York, at that juncture the foremost of all the United States in point of population, commerce, wealth and advantages of every name and nature, both natural and artificial, was bound hand and foot by a gang of the veriest robbers and free-booters that ever disgraced the history of any nation upon the face of the earth. *How ? By means of the purchase of from twenty-five to forty thousand votes of ignorant naturalized citizens*, whose knowledge did not even cover a proper use of a spade, and whose self-respect was measured by the extent of their bribes.

It is for these and many kindred reasons that the Fourteenth and Fifteenth amendments are unreasonable ; that an unrestricted suffrage is unsound and unwholesome ; nay more, that an unrestricted suffrage *is not an "impartial" suffrage*. Its injustice is manifested in the evidence of its unreasonableness, and although everywhere apparent in the simple fact that the vote of a *citizen* of the class that has for years directed and controlled the government of the State of New York is equal in force with that of an elector of ordinary knowledge, it is peculiarly demonstrated in the present political condition of the South. Four-fifths of the enfranchised people of that section of our country are persons whose lamentably unfortunate past condition was only equaled by their present ignorance. Their intellectual weakness only adds to their credulity, and the electoral power of which at present they are so unfittingly possessed is made the means, through gross imposition, of foisting into the controlling positions of the governments of the

Southern States unscrupulous and reckless adventurers from the North (nativism in the latter section operating as a blind upon the freedmen), who illegally and exorbitantly assess a proscribed and a major portion of the tax-paying population, formerly rebels, it is true, flood the money-marts with unwarranted issues of government securities, and plunge the States into almost hopeless and irretrievable bankruptcy.

The argument that *justice* to the blacks demanded their *immediate* enfranchisement, no matter what their intellectual condition, is extremely untenable. Generosity may have required it, but justice never.

This collateral point in respect to these amendments opens the door for an examination of their impolitic character. They were devised, in part, for the purpose of continuing the Republican party, for a while at least, in the control of the General Government—an end, as already remarked, under the then existing circumstances, entirely commendable and greatly to be desired. It could have been assured, however, by more just and far more politic means. An establishment of suffrage upon a national basis, with a stringent qualification of intelligence, accompanied by a measure providing for a universal amnesty, together with a rigorous election law for the prevention of fraudulent voting, would have secured the just and proper demand of the dominant party above named. The first (the suffrage measure) would have thrown the control of some of the Southern States, though not all of them, into the hands of the former rebel element. This, however, would have been fully offset by the consequent disfranchisement of Democratic ignorant native and naturalized whites at the North and West, such as have controlled the State of New York and are rapidly gaining the ascendancy in Connecticut. The second (the amnesty measure) would have done more to reconcile the former rebellious faction, disperse the Ku-klux and restore the South than all the reconstruc-

tion acts and Ku-klux legislation which have ever emanated from Congress. Such a constitutional measure, moreover, could have been adopted. The Southern and the Middle (together with those of the Northern) States which rejected the Fourteenth and Fifteenth amendments would have given it unqualified support, and the remaining number necessary for its ratification could have been easily secured from the Northern States which approved the last two articles above named. That would have been universal amnesty and *impartial* suffrage, indeed.

The deduction from this criticism constitutes, of course, an advocacy of intelligent suffrage. The plea is here urged that an unrestricted suffrage is its own incentive to the education of those who exercise it. The assertion betrays an unpardonable ignorance of one of the most prominent characteristics of human nature. Frail humanity is so constituted that when it has presented to it two ways of effecting its purposes, one with effort and the other without, it invariably chooses the latter. Equality, as a fundamental element of republican institutions, is also urged. Let such a sciolist read his conviction in the quotation from Burke already cited. Equality, moreover, is only a possession of such rights and privileges as are available by all, and such a privilege is a degree of intelligence sufficient to qualify any one for a proper legal elector. The claim for intelligent suffrage is not based upon prejudice to a particular class, race or nationality. It operates upon all alike—the native, the foreigner, the white and the black—and is conducive to a just appreciation of the trust. Community descant loudly of their *rights*. A *right* has never yet existed not preceded by a *duty*; and the duty which precedes the *privilege* of suffrage, and alone transforms it *into a right*, is education.

The argument must not be construed into a perpetual political yoke of bondage for the blacks. This unfortunate

portion of our population is entitled by every reason of justice and humanity to the fullest protection of the General Government in the immediate right of *citizenship* and the *prospective* privilege of the elective franchise. They are possessed of both—the one justly, the other by no show of reason, except so far as exceptional portions of them are educated and thereby entitled thereto. The plea that the prior slave population has had no opportunity for education is a mere argument of generosity. The law of self-preservation, in the case of governments as individuals, is paramount to all others, and forbids gratuities at the expense of the public weal.

The same is true of our foreign element. Argument upon the time of probation which should properly precede citizenship is not here pertinent—our laws in this respect, however, are far too lax—but the door to suffragan power should remain to them invariably closed till they are far better fitted by education therefor than three-fourths of our present foreign class, who are fully endowed with the elective franchise. The same also of our native whites.

Looking at this subject in any light we may, if regard is had for the teachings of experience, the principles of governmental science and the advancement of civilization, the Fourteenth and Fifteenth amendments, so far as they affect the elective franchise, are anachronisms in our political history and a detriment to our material and political prosperity. Their sanction was a grave mistake of a political party whose name is an exponent of many noble deeds, a power which piloted the country safely through the most terrible ordeal it has ever witnessed, and one which, when purged of an intensely illiberal and party-proscribing element, it is to be most sincerely hoped may long maintain its present supremacy.

CHAPTER II.

RECONSTRUCTION.

Executive Proclamation—Congressional Legislation—The Freedmen's Bureau—Virginia and Tennessee Reconstructed—Death of Mr. Lincoln—President Johnson's Policy—Progress of State Restoration—Congress upon Reconstruction in 1866—The Opening of the Executive and Legislative Conflict—Contest upon the Freedmen's Bureau Bill—The Same reviewed—Disagreement upon the Civil Rights Bill—Its Constitutionality considered—The Status of the late Disloyal States in this Connection—Citizenship considered—The Civil Rights Bill Unconstitutional—President Johnson Officially Declares the Rebellion Concluded—Continued Disagreement between the President and Congress—The Freedmen's Bureau Bill again in Question—The Same Vetoed—Neither Party entitled to Credit—A mere Fight of Policies—The Final Reconstruction Measures of Congress—The Same stated and fully considered—What Might have Been—Collateral Comment—Constitutionality of the Scheme—Vetoed by the President—Legality of Presidents Lincoln and Johnson's Measures—Conclusion of Reconstruction.

THE subject-matter of this chapter, for various reasons, will be confined within very narrow limits. Strictly speaking, the subjects of the first four chapters of the present part of this treatise are constituent elements of the general topic of Reconstruction, and are, one with the other, more or less directly connected. For reasons stated in the remarks inductive to this discussion of our organic and municipal code, however, a separate examination of the more important measures of reconstruction was therein announced. The investigation of the constitutional amendments necessarily led to an incidental statement of the different plans which were put into execution for the restoration of the South, the action taken thereunder, and a somewhat extended criticism of the same. It was, in short, a

treatment of reconstruction as connected with the Southern people in their *corporate capacity of State governments—the reorganization of the Southern States*. The succeeding chapters upon Amnesty and Force Legislation will embrace the greater portion of the subject of reconstruction as connected with the Southern people in their *individual* status—the reinvestment of the former rebellious masses with the duties, privileges and rights of suffragan citizenship. The design of the present chapter is to traverse the ground of both *State* and *individual* restoration, which is untouched by the first and next two succeeding ones, together with a mere chronological reference to the events which in these other chapters are fully noticed. It will consequently serve as a complete, consecutive narrative of reconstruction, with a full discussion thereof, except so far as the latter is accomplished in the collateral connections above named.

The initiatory measure of reconstruction assumed the form of an executive proclamation of Mr. Lincoln, December 8, 1863. This measure (see Appendix) provided that when the people of any rebellious State should lay down their arms, swear allegiance to the General Government and organize free State constitutions, etc. etc., such State should be entitled to its former position in the Union—meaning, of course, its representation in Congress.

Between the date of this proclamation and July 8, 1864, Arkansas and Louisiana had complied with the conditions thereof, the former under the supervision of General Steele, the latter under that of General Banks, officers commanding therein. At the date last above named Congress submitted a bill for the approval of President Lincoln proposing a plan of reconstruction, whereby the executive should assign provisional governors to all States in which rebellion should be crushed, under whose control the people thereof, having subscribed to an oath of allegiance, framed free constitutions, etc. etc., should be restored to

their original position as before the war, including their representation in Congress. The bill moreover assumed to abolish slavery. Mr. Lincoln withheld his approval thereto for reasons already given, but expressed his willingness in a proclamation of the date last above named (see Appendix) to co-operate with any State wishing to avail itself of its privileges.

Subsequent to July 8, 1864, and prior to April 25, 1869—namely, February 1, 1865—the Thirteenth amendment had been submitted to the States for ratification, a bureau for the relief of freedmen had been established the third of the preceding month, and Virginia and Tennessee, the former under the supervision of General Weitzell, the commanding officer therein, the latter under that of Andrew Johnson, military governor appointed by the President, had complied with the conditions of Mr. Lincoln's proclamation of December 8, 1863. None of the four States hereinbefore mentioned, however, had been admitted to their representation in Congress. At this juncture Mr. Lincoln died and Andrew Johnson assumed the duties of the chief magistrate.

Mr. Johnson determined upon a policy of reconstruction very similar to that proclaimed by his predecessor December 8, 1863, with this difference: Mr. Lincoln, Lee not having surrendered, entrusted the execution of his policy to the commanding generals and military governors in the insurrectionary States; his successor, the war, to all intents and purposes, having entirely ended, assigned this task to provisional governors appointed from resident civilians. From April, 1865, to January 1, 1868, North and South Carolina, Georgia, Alabama and Mississippi reconstructed under the policy of President Johnson, and the following-named measures of restoration were also promulgated:

April 29, commercial intercourse was restored, by means of executive proclamation, between the North and South,

excepting a few districts still without the possession of the national forces, barring trade in all articles contraband of war.

May 22, in the same manner, restrictions upon foreign commerce with the lately rebellious States were removed, excepting the ports of Galveston, La Salle, Brazos de Santiago (Point Isabel) and Brownsville in the State of Texas.

May 29, President Johnson issued a proclamation of qualified amnesty.

June 13, restrictions upon commercial intercourse with Tennessee were removed by executive order.

June 23, blockade raised by presidential proclamation, except as to all ports west of the Mississippi River.

October 12, the President suspended the operation of martial law in Kentucky.

December 1, executive order restored the writ of habeas corpus to all States and Territories except the lately insurrectionary ones, Kentucky, the District of Columbia, New Mexico and Arizona, the same having been suspended September 15, 1863, throughout the entire country.

December 18, the Thirteenth amendment was promulgated, the States of Virginia, Arkansas, Louisiana, Tennessee, North and South Carolina, Georgia and Alabama having aided in the ratification thereof; the first four having been reconstructed under President Lincoln's proclamation of December 8, 1863, the last four under the policy of President Johnson, as above described.

With the opening of the year 1866 the position of Congress upon the subject of reconstruction is hardly capable of definition. It had not given an open protest, so to speak, by any direct legislation, against the policy which had been pursued by the executive, yet none of the lately insurrectionary States, as restored under Mr. Johnson and his predecessor, had been admitted to their representation in that body. This last fact, together with unofficial state-

ments of Senators and Representatives, gave evidence of the legislative and executive conflict that afterward ensued upon the policy of reconstruction. The whole subject had been referred to a joint committee of both Houses of the national legislature, December 13, 1865, whose report thereon not only Congress but the entire people were awaiting with the utmost anxiety. This report, however, was delayed till midsummer of 1866, and in the mean time the President and Congress assumed an attitude of open hostility.

It will be remembered that, March 3, 1865, a bureau for the protection and relief of freedmen in the South was established by the General Government. As the measure, by experience, had proved somewhat inadequate for the ends in view, Congress, in the early part of February, 1866, submitted an act amendatory of the one last above named for executive approval. Its main features consisted in the reservation of three millions of acres of public land in the South from the operation of the homestead and pre-emption laws for occupation by former slaves at a rental to be approved by designated authorities, an extension of the former means of relief in the way of food and clothing, and the punishment, *by tribunals composed of the agents and officials of the bureau*, of all persons who should violate the rights under this act of its designated beneficiaries. As the bureau was to be placed by this bill under the control of the executive and War Department, and the agents and officials thereof appointed from the army, the court upon which the measure conferred jurisdiction for trial of offences thereunder—to which, moreover, a *criminal* penalty was attached—was in fact a military tribunal, a purely martial court.

The President, chafing under the non-admission to their representation in Congress of the Southern States which under his policy had been restored, vetoed the bill Febru-

ary 19 on various grounds, among the more important of which, and the only ones of particular import, were that the measure violated constitutional guarantees in that no person by our organic code should be deprived of life, liberty or property without due process of law, and that taxation should never be imposed without representation. The veto message was temperate and politic in tone, clear and concise in expression, logical in argument, and was doubtless shaped by the consummate diplomat who from 1861 to 1869 presided over the Department of State with an ability far greater than any which has graced the position since the retirement of Daniel Webster therefrom. As to the two grounds of objection above stated, they were not at least without a comparative show of reason. Although the Southern people could not be said to be *immediately* subject to taxation for the support of the Freedmen's Bureau, they were prospectively so in their accruing liability to share in the payment of the public debt incurred for this and other war-purposes; and granting, moreover, for the sake of argument, that they were not at this period entitled to representation in Congress, still, *they had complied with the conditions of the only policy for such restoration which the General Government had then prescribed*; and to say the least it would have been eminently fitting for Congress, while denying the validity of such restoration, to have provided a plan whereby the same might be effected before imposing upon the late insurrectionary States anything which might seem to be even but a constructive burden. The objection to the martial courts was sound and wholesome. The bill proposed to establish military tribunals in a comparatively peaceful country, and confer such jurisdiction upon persons who could not be presumed impartial (the agents and officers of the bureau) by reason of their wishes to see the institution maintain its supremacy. The scheme, in fact, was like giving a plaintiff in a cause a right to sit in judg-

ment thereon. Offenders under the act, moreover, the violation thereof having been declared a *criminal* offence, were certainly entitled to a trial by jury instead of by mere officers of war. Such jurisdiction should have been given to regular civil courts, even though constituted of non-resident officials. February 21st the bill was again put upon its passage, but not obtaining a two-thirds vote in the Senate, consequently failed to become a law. It was designed for a worthy and highly commendable purpose, and, with the exceptions above noticed, was an adequate mean for the attainment of a humane and philanthropic end.

Congress retaliated upon the executive by the adoption, February 20, of the following resolution—namely: “Resolved, That in order to close agitation upon a question which seems likely to disturb the action of the Government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in insurrection, no Senator or Representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such States entitled to such representation.”

The war of reconstruction was thus fully inaugurated, and proved a bitter and long-protracted struggle.

The next battle-ground in the conflict was that covered by the measure popularly known as the “Civil Rights Bill;” and here Congress was destined to prove victorious. The measure was submitted for the approval of the President about the middle of March, 1866, vetoed the 27th of the same month, and April 9th, having received the requisite two-thirds vote of Congress, was duly declared a law. The bill, reducing it to simple terms, provides in the main as follows—namely:

First. Declares all persons born and naturalized in the United States, excluding Indians not taxed, to be citizens thereof, and gives them protection in the usual rights of

citizenship—namely, those of personal security, personal liberty and the right of property.

The remaining sections of the bill merely provide means for the enforcement of the one just stated. It is also apparent upon the face of the measure that its sole design and purpose was to afford the prior slave population the privileges of citizenship.

Stating it very briefly, the position assumed by the veto message was, that the bill was unconstitutional, both as to the bestowal of citizenship and its attendant privileges, and also as to the means provided for the enforcement thereof. To put the question in the form of an interrogatory, it amounts to simply this: Can the General Government confer citizenship beyond that originally granted by our organic law, and establish means for the enforcement of its accruing rights and privileges, except by an amendment to the Constitution? Looking at the matter in the abstract, neither point of the inquiry is perhaps entirely clear; but viewing it as connected with the bill under consideration, while the first point may still be considered somewhat uncertain, the latter is beyond a doubt outside the pale of constitutional authority. To the whole inquiry, moreover, whether generally in the abstract, or relatively as confined within the scope of this particular measure of Congress, the better and sounder doctrine is probably found in a negative response. Both points of the question will be briefly considered in the order in which they appear in the foregoing interrogatory, and in their relative and abstract connection as above described. In pursuance of this plan of discussion, the main question resolves itself into four minor ones—namely:

First. Can the General Government confer citizenship and its attendant rights and privileges upon the prior slave population except by a change in our organic law?

Second. Can the same power enlarge the status of citizen-

ship, in a general sense, either as to persons or the rights and privileges thereof (citizenship) as it exists under the original Constitution, save by an amendment thereto?

Third. Can the General Government establish means for the enforcement of the rights and privileges of citizenship in behalf of the prior slave population unless such citizenship has been first decreed by the Constitution?

Fourth. Can the same power provide such means for the enforcement of such rights unless the extended limits of citizenship to which such rights and privileges attach are first declared by a constitutional enactment?

First. To so late a period as the outbreak of our late civil war (and somewhat later; that point is designated for convenience' sake, on account of its prominence) our Federal charter impliedly, and the United States Supreme Court expressly, denied the status, privileges and rights of citizenship to the prior slave population. By the letter of this instrument, indeed, as interpreted by the highest judicial tribunal of the land, the colored inhabitants of the slave States were considered as mere "persons," with "no rights which a white man was bound to respect." The Thirteenth amendment merely transferred these "persons" from a state of slavery to one of freedom—incidentally converting property into men—but it left them "persons" still. Relatively speaking, they were as far from citizenship as ever. In view of the law of the land there was not a single antecedent or immediate element of citizenship attached to their condition. How were they to be raised to that position? Was a mere act of Congress sufficient for the attainment of that end? *In what direction and with what effect does such an act of Congress operate?* An answer to the last interrogatory solves the immediate subject of investigation. Such an act operates to regulate the internal domestic relations of several States of the Union, and precludes the governments of such States from any

control over the matter whatever. Has the General Government a legal right to enforce a measure eventuating in such results? Seemingly not. The authority of the United States is measured by the provisions of our organic law, and when it seeks to enforce its legislation in respect to the internal domestic relations of the States, it must confine itself within the constitutional power leading in that direction. What is that power? With the exception of authority to legislate in reference to forts, armories, dock-yards, etc., located in State territory, the only power of this character is found in the clause of the Constitution which declares that "the United States shall guarantee to every State in this Union a republican government." Now, unless the investment of the Southern blacks with the status, rights and privileges of citizenship was necessary to guarantee to that section of the country a government republican in form, the measure of Congress elevating our prior slave element to that position apparently looks in vain to the Constitution for support; for, in the words of an eminent jurist, "a republican form of government is one which derives all powers directly or indirectly from the people, and administered by officers for a limited period or good behavior." Congress and the executive constitute the tribunal to decide as to what government is republican in form, it is true, but Congress *did not declare the civil rights bill a measure necessary for that purpose.*

The point is raised in this connection that the rebellious States forfeited all their rights under the Constitution; therefore Congress may legislate in respect to them as it sees fit. The proposition invokes the statement of principles which have been proved in a prior part of this discussion—namely: This Government is a unit, and not a State league. It cannot be diminished, dissolved or destroyed except by absolute force, by revolution. The point at which, by this means, this Government becomes dissolved, destroyed, is

that where a rebellious faction has conquered for itself such a position that the national authorities recognize and grant its independence. This point was not reached by the Southern States; consequently, all measures which were designed to regulate their internal relations required adoption in the usual manner—that is, by constitutional amendment instead of an act of Congress. To admit the claim just stated would be an acknowledgment of the legality and right of secession, which is itself refuted in the principles above announced, and explained in full in a prior connection.

The ends sought by the civil rights bill and the Thirteenth amendment, in fact, so far as the means requisite for their procurement were concerned, were perfectly parallel. They both sought to regulate the internal relations of the Southern States; and if a constitutional amendment was necessary to effect one, so was it the other. The General Government might as properly attempt to abolish slavery by mere legislation as to invest the former victims thereof with citizenship and its rights and privileges. It did, in fact, attempt this, as will be remembered, in its reconstruction measure of July 8, 1864 and Mr. Lincoln's grave and appropriate doubt of the legality and validity of the scheme, as expressed in his proclamation of that date, already stated, was one of the reasons for the refusal of his approval thereof.

Second. As to the extension of the status, rights and privileges of citizenship in general, in the abstract, as they exist under our original organic law. Prior to the adoption of the Fourteenth amendment, citizenship, under the Constitution, attached solely to our *free native and naturalized population*. The ground covered was very broad. With a qualifying remark in respect to the probation required at the hands of foreigners, it included all persons except our slave and savage element. Over the sub-

ject of naturalization Congress, under the Constitution, has the exclusive oversight and control. As to what shall constitute citizenship of *the United States*, moreover, the authority of the General Government is likewise supreme and exclusive. There is in this connection, however, a collateral point which demands attention. Notwithstanding the authority of the General Government as to what shall make *persons citizens* is sole and undivided, still, each State, under the Constitution, has an authority equally undoubted to define the position of *persons within its jurisdiction before they become citizens*, as it may deem most proper and advantageous. For instance, it may deny them the right to hold property, sue and be sued, etc., and the General Government is powerless to interfere. Now, although Congress, by means of an express power of the Constitution, can set the will of the States at defiance in this direction as to foreigners, yet when the General Government assumes to extend the status and rights of citizenship beyond the limits thereof, as found in the Constitution, *in respect to uncitizenized natives*, if we may use the expression, it seeks to enforce its will as to the internal relations of the States in a manner which, as has before appeared, seems to be authorized only by means of a change in our organic law. The point is not of much practical importance, as the limits of citizenship in respect to our native population, either as to persons or its attendant privileges, are hardly admissible of farther extension in any direction whatever.

The affirmation or negation of the third and fourth minor interrogatories stated in the outset of this discussion hinges entirely upon the disposition of the two preceding ones. If the General Government cannot bestow citizenship, either relatively or in the abstract, except by constitutional amendment, it cannot provide means for the enforcement

of the rights and privileges thereof except in pursuance of such changes in our organic law.

Considering the matter candidly and dispassionately, the veto of the civil rights bill of March, 1866, by President Johnson, was perfectly sound and wholesome, and in no sense a violation of his duties as chief executive of the United States. Congress itself has made a tacit admission of the same in its proposal of the Fourteenth amendment to the States for ratification. The first section of that article is but a reiteration, in substance, of the abstract principles of the civil rights bill, and aims to, and does, accomplish the same noble, humane and in every way commendable end which the last-named measure unwarrantably essayed to effect.

To resume the main narrative. In the interim between the submission of the civil rights bill to the executive for his approval, and his veto of the same—namely, April 2, 1866—that official issued a proclamation declaring the late rebellion, in all the States excepting Texas, entirely concluded.

It will be remembered that, December 13, 1865, Congress referred the matter of reconstruction to a joint committee of both Houses to take action thereon. June, 1866, the committee returned a majority and minority report neither of which demands an extended consideration in this connection, as the ultimate will of Congress in reference to reconstruction was not expressed till the passage of the act of March 2, 1867, and the ground covered by the reports, moreover, has been mostly traversed in a prior part of this discussion. The points thereof which have not received such attention will be submitted to an incidental consideration farther on. A glaring inconsistency in each report, however, provokes an immediate allusion. The majority report dwells at length and with great emphasis upon the alleged fact that the lately rebellious

States are without any legitimate form of government, totally disorganized, and yet, *at a period earlier than the date of this report by nearly a year, these same States had aided in the ratification of the Thirteenth amendment, and such action had been deemed entirely valid by Congress.* The minority report insists upon the dogma of secession as a constitutional right, and in almost the next paragraph surprises if not insults the intelligence of the reader with the claim that the lately rebellious States are integral parts of the Union, notwithstanding for four years they had exhausted every resource in maintaining the dogma above named. That they *were* integral parts of the Union has been shown in our discussion of the legality of the ratification of the constitutional amendments, and recently asserted when the civil rights bill formed the subject of consideration. In the proof of this fact, however, secession finds death, and not life, as maintained by the minority report of the committee on reconstruction. The two principles are perfectly antithetic, antagonistic in character, and the maintenance of the one is the refutation of the other.

The remaining narrative of reconstruction for the year 1866 is barren in events of any special importance which have not already been properly alluded to. June 16 the Fourteenth amendment was proposed by Congress for ratification, and the next collision between the executive and legislative departments, subsequent to the one upon civil rights for the blacks, occurred in respect to the third Freedmen's Bureau bill on the 16th of the following month. The original Freedmen's Bureau bill of March 3, 1865, which received the approval of President Lincoln, and thereby became a law, had none of the objectionable features of the bill amendatory thereof which was vetoed by President Johnson March 27, 1866. Even the plea of a constructive taxation of the South without representation could not be urged against the original measure, as the re-

bellious faction was at that period in a position of open hostility to the General Government, the result of the struggle was still enveloped with doubt, and the so-called Confederate States could not be said, either actually or prospectively, to be subject to the levies of the national authority. The last-named power, moreover, was under every obligation of justice and honor to protect the unfortunate freedmen, whom both by executive and legislative action it had arrayed against the forces of the rebellion. This original bill simply aimed to give the freedmen food and clothing, and to locate them upon the abandoned and confiscated lands of the insurrectionary States. It was defective in that it provided no tribunal before which violators of the law could be brought for trial. The bill vetoed by President Johnson March 27, 1866, was designed mainly to heal this defect, and essayed to accomplish that end by the establishment of military tribunals constituted of the agents and officers of the bureau—military men, and not civilians, and only responsible to the Secretary of War. Offences against the bill, moreover, were thereby declared criminal, and the right of trial by jury was denied. This was the principal ground of the veto message refusing the executive approval, and was wise, tenable and sound. The intention of Congress to amend the original law by establishing courts to enforce its provisions was commendable and proper, but giving military courts jurisdiction in the premises, and denying the right of trial by jury to persons charged with a criminal offence, was not only impolitic, but clearly illegal. The late war was entirely concluded. *The action of the legislatures of the States wherein these martial courts were established had been accepted by Congress for the ratification of the Thirteenth amendment, and the proposed further continuance of courts-martial in the room of civil tribunals was unnecessary and in direct violation of our organic law.*

The third Freedmen's Bureau bill, of July, 1866, was another attempt to amend the original law of March 3, 1865, as to juridical measures for the enforcement thereof, and to perfect the distribution of the abandoned and confiscated lands of the South among the blacks. It was much milder in form than the one vetoed in February of the same year, as it did not make violations of the proposed law a criminal offence. It proposed to give jurisdiction of such violations, however, to military tribunals, made up of the agents and officers of the bureau, *until the Southern States had been restored to their representation in Congress.* This was the only vulnerable point in this humane and necessary measure of legislation. There was no necessity for giving the bureau both ministerial and judicial powers. It was a grave inconsistency. *It placed an offender in the hands of the offended for trial, judgment, and the execution thereof.* It was a much graver inconsistency, moreover, to establish military courts in States until they should "be duly represented in the Congress of the United States," when such States had complied with the only conditions for such representation which the Government had announced—Congress not having passed any reconstruction measure—and when the legislative action of such States had been accepted for the sanction of a change in our organic law.

July 16, 1866, the President vetoed the bill as a matter of course. He could have pursued no other action without self-contradiction. Congress, moreover, could not have reasonably expected a different result. It framed the bill not with an eye for executive approval, but with regard to its ability to pass it over the disapproval of that official, which it did on the same day the veto message was received, thereby making it a law of the land.

In this immediate connection, saving the criticism as to the Congressional military courts hereinbefore given, and the matter of representation in Congress, no especial blame

or credit attaches to either that body or the executive. It was a mere fight of "policies," and Congress proved the strongest party in the conflict. History has fully shown that the bestowal of juridical power upon the agents and officers of the bureau was an unwise and impolitic measure. By reason thereof its administration has been made the vehicle of many corrupt and unlawful transactions, whereby private pecuniary aims were served and the public interests subverted.

July 25, 1866, Tennessee, having ratified the Fourteenth amendment, was admitted to her representation in Congress.

August 20, 1866, the President issued a proclamation declaring the rebellion at an end in the State of Texas, and civil authority fully restored throughout the entire country.

December 3, 1866, the following section of the act of July 17, 1862, was repealed, in order to bar anticipated proclamations of pardon for the late rebels by the executive. The repealing bill became a law by reason of the failure of the President to sign or return it with his objections within ten days after the same was submitted to him for approval:

"That the President is hereby authorized at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions, and at such time and on such conditions, as he may deem expedient for the public welfare."

During this year, 1866, moreover, Florida and Texas, the only remaining insurrectionary States which had not reconstructed under President Johnson's policy, complied with the conditions of the same and awaited the admission of their representation to Congress.

The first reconstruction measure of any importance in 1867 was the act of March 2d of that year whereby Congress declared its policy in reference to the restoration of

the South. It is thus seen that very nearly two years had elapsed since the surrender of Lee before our legislative department pointed a way to the lately insurrectionary States whereby they could resume their original positions in the Union, including the privilege of participating in the legislation of the General Government. The principal provisions of the act received an incidental statement in our discussion of the constitutional amendments. Asserting in the outset that no legal governments or protection for life or property exist in the lately rebellious States, excepting Tennessee, it consigns them to military rule, directs the President to appoint commanders for the districts into which said States are divided, with full power to organize martial courts in lieu of the regular civil tribunals in case existing circumstances should so require. The bill further provides, that when the States above named shall have ratified the proposed Fourteenth amendment, and established free constitutions which shall meet the approval of Congress and not conflict with that of the United States, they shall be entitled to resume their original status with the General Government as before the war, and their Senators and Representatives allowed their seats in the national legislature. The minor points of the act do not require particular mention.

The act, so far as it went, essayed a plain, appropriate, sensible plan of reconstruction, and had it been framed and promulgated two years earlier, or even directly after the assembling of Congress in the winter of 1865-66, not a word of objection could have been offered thereto except for its incompleteness. Simple in its terms, direct in its intended application, its comparative necessity since the summer of 1865 perfectly apparent to every intelligent citizen, its provisions would seemingly have been the result of an hour's conference of any deliberative body of ordinary capacity at any time subsequent to Lee's surrender ;

substituting, perhaps, civil for military forms of provisional government. Thus much in commendation of the act. No credit for even ordinary wisdom, however, attaches to its invention, and the entire scheme is to be regarded with the following important qualifications. The act asserts that there are no legal governments in ten of the lately rebellious States. Neither admitting nor denying the claim in this connection, the question is pertinent, If not, why not? For the simple reason that Congress by its inaction had prevented the formation of governments in these States which, in its opinion, would be of a legal character. This same legislative body, however, had considered these *illegal governments sufficiently legal to give a valid ratification of the Thirteenth amendment*. The act, moreover, declares that there is no adequate protection for life or property in these States. Partially true. But why? Merely because the non-committal attitude of Congress had enveloped the entire situation at the South with doubt and uncertainty. The act imposes military governments upon the people of the ten States before named. For good reasons? With a show thereof, for the incongruous masses were in a normal condition of revolt, owing entirely, however, to the absence of a firm, settled policy on the part of the General Government. But this act, in its essential features, could have been passed over the President's veto in 1865 as well as in 1867. Why was it not done? Solely for the reason that Congress was trusting to fortune. If at the opening of the year 1867 the Southern States had ratified the proposed Fourteenth amendment, which had been submitted in June, 1866, instead of rejecting it, the act of March 2, 1867, would never have been devised. When Congress assembled in December, 1865, it did so with the intention of making the enfranchisement of the blacks a *sine qua non* for the admission of a Southern delegation to Congress. For the attainment of this end it proposed the Fourteenth amend-

ment, which essayed to effect such enfranchisement in a negative form by imposing penalties for the denial of the same. This amendment was not sanctioned by the ten States before named ; hence the act now under consideration, compelling them to perform what the threat of the Fourteenth amendment failed to accomplish. The claim is by no means intended in this connection that the General Government had no right to demand the performance of such conditions precedent from these States as it saw fit as a requisite for their restoration. It had the undoubted right so to do ; but instead of prospecting about from April, 1865, to March, 1867, inflicting almost immeasurable injury upon the commerce and industries of the country, Congress should have squarely met the issue at least as early as the winter of 1865-66, and, if it could not have agreed upon intelligent suffrage, incorporated the substance of the Thirteenth, Fourteenth and Fifteenth amendments into one article of organic law, barring the proscriptive provision, submitted it to the States for ratification, with a reconstruction measure saying to the lately insurrectionary section, "Your people, without exception, are granted full and complete amnesty ; ratify the proposed amendment to the national charter, establish free constitutions and governments within your territory, and then, but not till then, resume your original position as integral States of the Union." The next succeeding session of Congress would have witnessed the full consummation of such a plan of restoration, the recomposition of elements still violently discordant, and a general revival of commercial and industrial pursuits.

The President, as was fully anticipated by Congress, vetoed the bill March 2, 1867. The principal ground of his message expressing his disapproval of the scheme consisted in the assumption that the imposition of military governments upon the ten States named in the bill was a

violation of the Constitution of the United States. Probably not. It may have been impolitic—the legislative record which preceded and finally induced it was certainly slovenly in the extreme, and the measure itself, considering the time which had elapsed between the close of the war and its adoption, was a grave and dilatory assumption of a power which lies at the extreme outpost of constitutional warrant—but the taint of illegality laid to its charge the veto message of the executive does not conclusively prove. The constitutionality of the act is based upon that power of our organic law which declares that the United States shall guarantee to every State in the Union a republican form of government. The warrant which this power gives for the act of March 2, 1867, may be seen by a mere statement of principles which were fully discussed and proven in the next preceding chapter. The power above named is of a twofold character—discretionary or judicial, and ministerial; namely, the United States shall decide what governments are republican in form, and upon such decision shall see that they are guaranteed. In its ministerial aspect the President, in case of invasion or immediate danger, by reason of his prerogative as commander-in-chief of the army and navy, can exercise this power without authority from any other branch of government. In its judicial or discretionary aspect, however, the Supreme Court has decided that the right to its exercise is jointly vested in Congress and the executive. That is, the President and Congress constitute the tribunal which is to decide what governments are republican in form. This tribunal is of a political character. It acts under political and not judicial rules and precedents. These rules and precedents consist in the enactment of laws by Congress and the enforcement thereof by the executive. In other words, the manner in which this political tribunal declares its judgment is by the enforcement of legalized legislation. The Constitution

has defined two methods therefor: First, legislation shall be legalized by the approval thereof of the executive, or by its receiving a two-thirds vote of Congress against his disapproval. When legalized in either of the above forms, the President, by his official oath, is bound to enforce it. The regularly-constituted tribunal therefor, the President and Congress, held the governments of the ten States named in the act of March 2, 1867, to be non-republican in form in one of the two legal and proper methods—namely, the one last above described; and, not to recur to this subject again, the reconstruction of the States under the act above named was, like the act itself, perfectly legitimate. The political tribunal above described has an undoubted constitutional power to hold the government of any State non-republican, however wrong may be its decision; and when so held in either of the two constitutional methods above described—namely, legislation legalized by the approval of the executive, or by a two-thirds vote of Congress against his disapproval—and the same is enforced by the chief magistrate, as by his official oath he is bound to do, every step of the process, though barely is still fully within the pale of our constitutional law. All this occurred in reference to the act of March 2, 1867, and the proceedings thereunder, and the legality of both is not susceptible of just accusation.

The President, in view of his prior official course, might very properly have vetoed the bill as a rashly impolitic scheme, but not on the ground of its violation of our organic law.

As to the propriety, policy and desirability of the act, generally speaking, little need be said in addition to what has already inferentially appeared. The exigencies of the moment demanded some such decisive measure, *but these exigencies had their origin in the inability or unwillingness of Congress to appreciate the true situation at the proper time.*

The then disturbed and incongruous condition of affairs at the South was the legitimate offspring of the inactive policy of our legislative department. It possessed the constitutional power to reconstruct the lately insurrectionary States in accordance with the act of March 2, 1867, at any time subsequent to the cessation of hostilities therein, and at this long-deferred period probably no more efficient or suitable scheme could have been resorted to; but at an earlier date the ends achieved by the act above named might, in all probability, have been secured in pursuance of a policy similar to that initiated by Mr. Lincoln, and pursued in all important respects by his successor—namely, a policy of reconstruction *under civil local authority, with full protection, military if necessary, to all classes of people, of whatever race, creed or political belief*. With universal amnesty such ends might certainly have been obtained.

The bill was passed over the President's veto on the day of the announcement thereof to Congress (March 2, 1867).

A word is pertinent in this connection as to whether the reconstruction of the lately insurrectionary States by Presidents Lincoln and Johnson, *without a subsequent approval of Congress*, was legitimate—whether, by force of such reconstruction, their original status with the General Government, as before the war, was duly resumed. It was not. The twofold constitutional power, hereinbefore discussed, for the restoration of States to republican forms of government, the executive can exercise only in its ministerial aspect. With its judicial discretionary bearings the President, exclusive of Congress, has nothing to do whatever. With Congress, in this direction, the President can act, and either with or without this official, as already stated, in the two legal methods defined by the Constitution—that is, legislation legalized by the approval of the executive, or a two-thirds vote against his disapproval—the will of Congress is alone supreme.

March 11, 12 and 15, the President assigned commanders to the military districts composed of the lately insurrectionary States, in pursuance of the Congressional plan of reconstruction, as follows :

First District.—State of Virginia, Brevet Major-General J. M. Schofield ; head-quarters, Richmond, Virginia.

Second District.—North Carolina and South Carolina, Major-General D. E. Sickles ; head-quarters, Columbia, South Carolina.

Third District.—Georgia, Florida and Alabama, Major-General G. H. Thomas ; head-quarters, Montgomery, Alabama.

Fourth District.—Mississippi and Arkansas, Brevet Major-General E. O. C. Ord ; head-quarters, Vicksburg, Mississippi.

Fifth District.—Louisiana and Texas, Major-General P. H. Sheridan ; head-quarters, New Orleans, Louisiana.

The act of March 2, 1867, contained no provisions as to the manner of its enforcement. A supplemental measure for this purpose was submitted to the President, vetoed the 23d of the same month, and adopted over the veto on the same day.

March 30, 1867, the President approved a joint resolution limiting the amount of money to be paid from the Treasury for the purposes of reconstruction to the sum of \$500,000.

The district commanders above named, in pursuance of their duties as designated by the reconstruction acts of Congress, removed the civil officials of the States elected under President Johnson's reconstruction policy in cases where they refused to acknowledge the paramount authority of these officers. This conflict of civil and military rule induced a further measure of reconstruction, vesting the power of removal in cases as above intimated in the district commanders, subject to the disapproval of the general

of the army, and in the last-named officer unqualifiedly, and construed certain portions of the former acts to which this was supplemental. In other respects it is not important. The bill was submitted to the executive for approval in July, 1867, vetoed, and adopted by Congress over such veto, on the 19th of the same month.

The examination of the subject of the present chapter is now brought to a point beyond which little is required save a mere chronological statement of events which were consequent to the reconstruction policy of Congress.

September 7, 1867, the President extended the classes of beneficiaries of his amnesty proclamation of May 29, 1865.

March 11, 1868, an amendatory reconstruction measure was passed over the executive veto, regulating the matter of elections under the original act.

June 22, 1868, Arkansas having complied with the requirements of Congress, provision was made for her restoration to the Union, allowing her Senators and Representatives seats in the national legislature. The declaratory bill was passed over the executive veto, and needs no special examination.

July 21, 1868, Congress passed a joint resolution declaring the proposed Fourteenth amendment an integral part of our organic law, and on the 28th of the same month the same was duly promulgated by the State Department.

June 25, 1868, North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida were, for the same reasons, placed upon the same footing with Arkansas, with a single qualification as to Georgia.

July 4, 1868, President Johnson proclaimed a general amnesty for all participants in the late rebellion, with certain exceptions as to crime, and December 25th of the year, in the same manner, made this amnesty universal and unqualified. The question of the legality of these various

amnesty proclamations of Mr. Johnson will be considered in the next succeeding chapter.

February 27, 1869, the proposed Fifteenth amendment was submitted to the States for ratification.

The next measure of reconstruction requiring record dates subsequent to the inauguration of President Grant—namely, April 10, 1869. At this time, by an act of Congress bearing executive approval, the President was authorized to submit the newly-formed constitutions of Virginia, Mississippi and Texas to the people of those States for ratification.

On December 22d of the same year further means were provided for the restoration of Georgia.

January 26, 1870, an act of Congress was approved by the executive restoring Virginia to her original status with the General Government, and giving her a representation in the national legislature.

On February 23d and March 30th of the same year similar action was taken in reference to Mississippi and Texas, respectively.

March 30, 1870, the Fifteenth amendment was promulgated, and President Grant forwarded a special message to Congress thereon.

May 27, 1870, an act was adopted providing for the enforcement of the Fourteenth and Fifteenth Articles of the Constitution.

July 15, 1870, an act of Congress bearing executive approval declared Georgia, the last of the lately insurrectionary States, reconstructed under the Congressional policy, restored to her original position as before the war, and entitled to a representation in that body.

The discussion of reconstruction, so far as the purposes of this chapter are concerned, as stated in the outset, is now complete. Trivial omissions of minor details have been intentionally made, as the subjects of such omissions

were not of sufficient dignity to require consideration. One correction in this respect, however, will be made in this connection. The restoration of Virginia, Texas, Mississippi and Georgia not having been effected when the proposed Fifteenth amendment was submitted to the States for ratification, the additional duty of sanctioning this change in our organic law was imposed upon them by Congress as a further requisite for the admission of their representation to that body. This fact delayed the restoration of these States to the periods hereinbefore mentioned.

The author wishes to make the acknowledgment that the examination of the statutes of the United States, as connected with the subject of the present chapter, has been greatly facilitated by reference to the "Political Manuals" of Edward McPherson.

CHAPTER III.

AMNESTY.

The Question stated—The Several Measures of Proscription—Official Proscription—The Iron-clad Oath Act—The Proscriptive Feature of the Fourteenth Amendment—The Same construed with the Iron-clad Oath Act, and their Operation and Effect considered—The Constitutional Oath Act—Suffragan Proscription—The Abstract Causes which render Amnesty Necessary—The Direct and Collateral Ends sought by its Institution—The Last fully equal to the First—The So-called Moral Argument against Amnesty refuted—The Various Proscriptive Measures criticised—The Same based upon Policy—Not needed to Secure the Results of the Late War—Prejudicial in their Tendencies to the Welfare of the Entire Nation—Proscription as a Means of Punishment—Inadequate and Indefensible—The Policy of Hate—Universal Amnesty Required—The Problem now before the People—The Ku-klux Klans—The Pathway out of Present Difficulties—Executive Action in respect to Amnesty—Partly Legal and Partly Illegal—President Johnson Dismissed—Interlocutory Comment upon

his Impeachment—The Status of Missouri—The United States Supreme Court on Test Oaths.

SEVEN years have elapsed since Lee's surrender, six since executive proclamation declared the late rebellion concluded throughout our entire domain, four more have intervened since a majority, and two since the last, of the so-called seceded States were restored to their original position with the General Government as before the war ; and yet a numerous portion of the thinking, educated and intelligent men of the above-named States are under the ban of political proscription. They cannot hold office, neither, in some instances, can they vote. The record of such a fact at this period is a humiliating commentary upon the statesmanship of the legislators who *assume* to represent the American people in the halls of Congress. The assertion embodied in their assumption, that the majority of the Northern population are averse to universal amnesty, is, to say the least, a grave mistake of a patent fact, and a slander upon the mature judgment and sound discretion of an intelligent constituency. It is, indeed, a condition of things truly lamentable that it is still necessary to argue the proposition that the continued political proscription of the most capable, experienced portion of the Southern masses, the official ostracism of the greater part of the educated community of eleven of these United States, the political, commercial and industrial interests of one of which are the interests of all, is exceedingly detrimental to our general prosperity ; that universal amnesty, in short, is imperatively demanded by every principle of private and public policy ; yea more, that it is absolutely indispensable for the prevention of internal strife and the joinder of present discordant elements for the promotion of both local and national weal. Such, however, is the fact, and the purpose of this chapter is to affirm the proposition above stated.

Before proceeding to discuss the subject, either in its abstract or relative bearings, it will be conducive to a better understanding of the same to take a brief survey of the measures whereon the present system of proscription is founded, and trace the limits of its practical operation through the various stages of its existence. This proscription, as already stated, is of a twofold character—namely, official, that is, incapacity to hold office; and suffragan, that is, inability to vote. Of these in their order.

The superficial opinion is quite prevalent that the only *original official* proscription ever imposed upon the late rebellious portion of our population was by virtue of the third section of the Fourteenth amendment. Nothing could well be farther from the truth. The proscriptive policy was inaugurated—and, the element of time being taken into consideration, very properly inaugurated—by the act of Congress of July 2, 1862. This act embodies an oath of office of such stringent character, to which, by the terms thereof, “every person elected or appointed to any office of honor or profit under the Government of the United States” must subscribe, that it has been properly denominated the “iron-clad oath.” The operation of this act excluded all persons from holding office *under the General Government* who had participated in or supported the late rebellion. With the exception of the blacks and a very small number of whites, this act consequently incapacitated the entire population of the recently rebellious section for holding office *under the United States*. Thus stood official proscription down to the adoption of the Fourteenth amendment.

With the close of the war and the commencement of reconstruction Congress conceived the alleged necessity of a more stringent proscription than that created by the act of 1862, above described. For this end the third section of the Fourteenth amendment was devised, the importance of

which in this connection demands its bodily incorporation herewith—namely :

“SECTION 3. No person shall be a Senator or Representative in Congress, *or elector of President and Vice-President*, or hold any office, civil or military, under the United States, *or under any State*, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House remove such disability.”

It will be remembered that the provisions of the test-oath act of 1862 merely precluded all persons of a prior rebel status *from holding office under the General Government*. The proscriptive feature of the Fourteenth Article, however, although it embraces, it is true, a much smaller yet far more important class, covers a much wider field of official status. It contemplates both official and suffragan proscription. Confining our attention to the former at present, it is seen that this change in our organic law barred all participants in the late rebellion who, as prior members of Congress, officers of the United States, members of State legislatures or executive or judicial officers of any State, had taken an oath to support the national Constitution, from holding any office whatever, *either under a State or the United States Government*. The third section of the Fourteenth amendment, therefore, taken with the test-oath act of 1862, is a cumulative measure of proscription. The test-oath act incapacitates all late rebels for holding office *under the General Government*; the Fourteenth Article leaves the test-oath intact, and furthermore denies to all persons named in the third section thereof—a very important element—the privilege of holding office under either the government of

any State or of the United States. From this official ostracism, moreover, so far as these two measures were concerned, there was no exit whatever; for, although the Fourteenth amendment provided for the removal of disabilities by a two-thirds vote of Congress, still, the original offender, purged in this manner of his contempt, was obliged by the act of 1862 to subscribe to the iron-clad oath therein contained—namely, that he had never rebelled against the General Government—which was, of course, absolutely impossible. Perceiving that the clause of the Fourteenth amendment which provided for the removal of disabilities would thus prove a dead letter, Congress, as soon as the adoption of this article was assured—namely, in the spring of 1868—provided by its act of July 11 of that year that all persons proscribed by the Fourteenth amendment, after procuring a removal of their disabilities by a two-thirds vote of Congress in accordance therewith, might qualify for office by subscribing to a mere oath to support the Constitution of the United States, instead of the iron-clad oath of 1862. Thus in the summer of 1868 stood official proscription in the second stage of its existence—namely, the masses of prior rebels were incapacitated by the test-oath act of 1862 for holding office under the General Government. A portion of these masses (the parties named in the third section of the Fourteenth amendment) were further disqualified for holding office under *any State* government, as well as under that of the United States. For the *masses* proscribed under the test-oath act of 1862 there was no relief. For that portion proscribed under the Fourteenth amendment a door was opened from their official ostracism by a two-thirds vote of Congress and the privilege of taking the constitutional oath of 1868, instead of the iron-clad oath of 1862. The scheme worked an injustice, for the masses proscribed under the test-oath act of 1862 were the rank and file, so to speak, of the late in-

surrectionary faction, and comparatively innocent, while the limited class disqualified by the Fourteenth amendment were the leaders of the rebellion, and pre-eminently guilty.

The next change in this system of official proscription was effected by the act of February 15, 1871. This measure provided that all persons elected to office, not incapacitated by the Fourteenth amendment, might qualify therefor by taking the mild constitutional oath of 1868, instead of the iron-clad one of 1862. This removed the cause of injustice above referred to, and placed all offenders, relatively speaking, upon a more equal footing. The inconsistency was allowed to stand, however, for nearly three years without the slightest modification. Thus stood official proscription in the spring of 1871, in the third stage of its existence, and thus it stands at the present moment (February, 1872); that is, the great mass of prior rebels under the act of 1871 may qualify for office without any difficulty whatever; the portion proscribed by the Fourteenth amendment may qualify by first procuring the removal of their disabilities by a two-thirds vote of Congress; and then both classes—all prior rebels—may be inducted into any office, under the government of any late insurrectionary State or that of the United States, by subscribing to a simple oath to support the national Constitution; while *all non-participants in the late rebellion* can enter upon the duties of such offices only by taking the iron-clad oath of 1862. Absurdity so patent requires no remark whatever.

Turning now to the matter of suffragan proscription, the gist of the system is found in the third section of the Fourteenth amendment and the reconstruction act of March 2, 1867, and those amendatory thereof. This amendment works suffragan proscription—that is, denies the privilege of voting—only to the extent of precluding the parties named therein from becoming electors of a President and Vice-President of the United States. In reference to the

restriction placed upon suffrage by the reconstruction acts, a preliminary remark may not be deemed wholly unnecessary. As the right to regulate suffrage is impliedly left by the national Constitution to the several States, it is evident that when the lately insurrectionary ones *were once restored to their original position as before the war* no restriction could be placed upon suffrage within their limits except by an amendment to our organic law. As Congress did not see fit to propose such an amendment for ratification, it secured, in an indirect manner, a very considerable restriction of suffrage in the late rebellious section by means of the reconstruction measures inaugurated by the act of March 2, 1867. These acts provided that the lately insurrectionary States should not be admitted to their representation in Congress until, among other things, they should have adopted State constitutions which should meet the approval of the national legislature. Acting upon this requirement, these prior rebel States, for the most part, framed constitutions whereby a considerable portion of the population who participated in the rebellion are denied the privilege of the elective franchise. These constitutions, in respect to suffragan proscription, have been materially modified by subsequent amendments. The way is now opened for the examination of Amnesty in both its abstract and relative conditions.

At the outset of the present branch of this discussion the inquiry is peculiarly pertinent, What are the causes which render the institution of amnesty necessary, or even desirable? The answer is no less simple than the interrogatory is pointed: Amnesty assumes a place in the polity of a nation solely because offences have been committed against its government. The only beneficiaries of such a policy, moreover, are the parties guilty of the offences which amnesty proposes to condone. Amnesty, in short, is pardon for an offending class. These are plain,

homely truths—so plain and homely, indeed, that they have been entirely overlooked by men who stand in the halls of Congress and hold the welfare of the country in their grasp. The sentiment, in fact—in substance, if not in words—has repeatedly found expression from the lips of parties who respond to the appellation of statesmen, *that the guilt of our prior rebel population precludes them from laying any claim to amnesty whatever.* Does frail humanity seek forgiveness of its Maker *on the score of virtue?* Does *innocence* put up a prayer for pardon? The affirmative of these inquiries is the precise ground whereon a majority of the opponents of amnesty take their stand. Their position is both an abuse of terms and a stultification of law municipal as well as law divine.

The deduction is warrantably made from the next preceding paragraph that the direct end of amnesty is pardon by government to offenders against its authority. The thought suggests itself, however, in this connection: Are there no *collateral* results obtained by the institution of amnesty? Is the absolution of the guilty the *only* end which government contemplates in the establishment of such a policy? “‘Who that is not with me is against me,’ fell from the same lips which taught that love is the first duty of man,” is one of the many elegant apothegms of Frederick Spielhagen, but forgiveness prompted by pure motives of affection is not an attribute of states and governments. It belongs to individuals and God alone. The springs of amnesty, of governmental pardon, are found in the expectation of contingent gain. Nations, so to speak, are but concretions of individuals. Their strength lies in the harmony of the component masses, and their prosperity is dependent, in a great measure, upon the existence of a feeling of common loyalty among its several members. The promotion of this strength and the augmentation of this loyal sentiment are the indirect ends and contingent

gains which amnesty seeks to secure. The existence of this state of harmony and loyal sentiment among the inhabitants of a state, moreover, is brought about by the operation of law. Law eventuates in these results in a twofold method. The first is by imperative command; the second is by the institution of a condition of things *whereby the motives which lead to individual action are voluntarily reformed or changed*. Is the first the most productive of the greatest good? No! Humanity is not thus constituted. Inducements are far more potent than arbitrary edicts. It is in the second method above defined that amnesty seeks the contingent gains above expressed. Now, how shall it seek the greatest gain? Or, in other words, what grade of amnesty, what measure of pardon, gives the most abundant warrant for national prosperity? There is but one reply, in the light of the foregoing truths—namely: The most complete pardon—the fullest amnesty—universal amnesty.

There is a so-called moral argument put forward in this connection which holds that an absolute refusal of amnesty is in some instances obligatory upon governments, in order to deter the commission of future offences against their authority. The argument is out of place, foreign to the subject to which its authors would tack it. It belongs to the science of *purely criminal law, the infliction of penalties upon parties guilty of crime involving moral turpitude unmixed with political motives*. Political offences, under every government and in all countries, have never been *classed or treated as absolute crimes*. Their treatment has always been in the light of *policy* much more than with a view of *punishment*. In connection with unqualified *crime* this so-called moral argument is both pertinent and wholesome. In connection with political offence it is, so to speak, entirely *per gratia*, an enforcement of dwarfed statesmanship, a mere argument of simple selfish vengeance. It is the treatment of political offences *merely*, and *not crimes*,

with which amnesty has to do. The remembrance of this fact avoids the mistake of the promulgators of the theory above described.

In the light of these abstract principles we are prepared to examine the subject of amnesty as connected with the immediate status of political affairs in these United States. The reason why future amnesty is sought by offenders against our national authority is due to the fact of past proscription. The method of such proscription was detailed in the opening remarks of this discussion. A brief examination of the merits of this proscriptive policy, and of the ends it sought to accomplish, is necessary in this connection. The initiatory measure of proscription as provided in the test-oath act of 1862 was purely a politic institution. It in no way contemplated a punishment of the faction engaged in the rebellion. It was designed to bar the participants therein from obtaining office and power under the General Government, whereby their unjust and rebellious schemes might be carried to a more successful issue. At that crisis of our history, moreover, the measure was eminently sound and wholesome. It was a simple compliance with the law of self-preservation. The country was in the midst of unprecedented and indeterminate civil war, and its chosen guardians were bound by their official oaths, as well as by every reason of justice, to closely hedge the gateways which led to places of official honor and trust.

The next succeeding measures of this proscriptive policy are found in the third section of the Fourteenth amendment and the constitutional oath act of 1868. The character of these institutions was fully stated in the early part of this discussion. At the period of their conception even, without reference to the time of their adoption, the late rebellion was, to all intents and purposes, entirely concluded. With this fact in view the inquiry is pertinent,

What were the ends contemplated by these second measures of our proscriptive policy? Were they devised as a measure of punishment, or for purely politic purposes, or for both combined? Undoubtedly the latter, and in both respects they were pre-eminently defective. These measures were characterized by motives of policy, in that they sought the continued ascendancy of the party in power. They contemplated a means of punishment in the proscription of the more prominent classes of the South. Let us look, for a moment, at the feasibility of these measures in this double aspect and in the order above named. At the date of their contemplated procurement the paramount need of *the entire country* was the establishment of a firm, comprehensive, conciliatory government for the Southern States—one which should afford ample protection for *every* class, it is true, but one, moreover, which should not alienate or estrange *any* section. This was the policy which imperatively demanded adoption in the spring of 1866. Was its perfection properly provided for in the two proscriptive measures last named, the third section of the Fourteenth amendment and the constitutional oath act of 1868? In no possible manner can the inquiry be affirmed. These features of our more general reconstruction scheme gave the entire control of the delicate and stupendous task of re-establishing State governments throughout the South into the hands of people who, for the most part, although just released from the bonds of slavery, were completely hampered with the fetters of ignorance. From all share in this important work the intelligent and experienced masses of the South were entirely excluded. It would seem to require no argument to prove that the delicate machinery of government could not be organized by such a motive-power. At the present epoch of our history it is certainly not required. The governmental status of the lately rebellious states is an all-sufficient commentary thereon.

The point is raised in this connection that the substantial results of the war would have been virtually abandoned without the proscription imposed by the third section of the Fourteenth Article of our organic law. Taking from the Fourteenth amendment its proscriptive section, and substituting nothing in its stead, the proposition is perfectly tenable and correct. Otherwise not. The gist of the argument is, that in the absence of this proscription the State governments of the South would have passed entirely under the control of the old promulgators and leaders of the rebellion—that the blacks would have been denied a voice in their construction and management, and the ascendancy of the Republican party put in jeopardy. The continued ascendancy of that party in 1866, as now—or rather the principles of which the party was and is declared to be the exponent—was an end greatly to be desired. But neither a continued lease of power to this political organization nor the political status of the blacks was secured by proscription. *On the contrary, both were imperiled.* These proscriptive measures arrayed the intelligent masses of the South—the arch-rebels, if this appellation is more satisfactory—in direct and open hostility against not only the prior slave element, but the General Government, *and thereby the Republican party.* It was like establishing a hostile army of occupation, composed of the very forces necessary for co-operation in the general work of reconstruction, in our own territory. The scheme failed, and it deserved to fail, ignobly and irretrievably. The pathway out of the surrounding difficulties of 1866 (that is, if we were to have universal suffrage) was perfectly simple and apparent. No proscription, universal amnesty, the direct declaratory provision of the Fifteenth amendment instead of the hesitating, indirect threatening voice of the Fourteenth Article as to suffrage for the blacks, and a rigorous election law to protect voters at the polls and render fraudulent ballots impossible.

A plain, firm and yet conciliatory policy of this sort would have made the Southern people a unit, promoted a spirit of loyalty for the General Government, sustained the Republican party, and immeasurably enhanced the general prosperity of the country.

Turning now to this proscriptive policy as a means of punishment, very little need be said. It was wholly inadequate. If punishment was to be meted out to the participants in the late rebellion, the scheme of proscription was in no way appreciable of its necessary extent. As a punitive measure it was merely tantalizing, annoying and productive of sectional strife and discord. If the prior rebel population were to suffer a penalty for their revolt, the only one of sufficient dignity to demand enforcement, on the score of barring future rebellion, was either banishment or death. Opposed to this alternative there was no other tenable ground but absolute and unlimited pardon. For governments, at least, if not for individuals, enemies are best despatched or made friends. It was of all follies the most absurd to place thousands of intelligent and thinking men, who were to live under the Government of the United States, and form innumerable and indissoluble commercial and social relations with the inhabitants of other sections, in a position where they could be possessed of no other possible motive but to rebel. Moreover, many of the proscribed masses of the South, indeed, regarded their political ostracism as a sort of grim dignity, an insignia of paramount importance, while in the remaining portion it only engenders feelings of hatred on account of its trivial import as compared with the gravity of their offence. Thus much for the measures of proscription and their alleged merits. Attention will now be directed to present and future needs as connected with their further existence.

The problem now demanding solution at the hands of American statesmen is the present and future material pros-

perity of the country. We are dealing—or rather should deal—with the promotion of present and future interests, instead of remembrance of past misfortunes or the nature and existence of prior disagreements. The more especial wants of the country, as suggested by this question of material weal, are best seen in the present condition of affairs at the South. A more humiliating burlesque upon government could scarce be imagined than that presented by several of the lately rebellious States. The ignorant masses into whose hands was exclusively committed the work of reconstructing governments for this section of the country have, as a matter of course, proved wholly incompetent for the task. It is difficult to determine whether the country has suffered most by their ignorance or credulity. The former has rendered them entirely incompetent for the places of trust to which our proscriptive policy has elected them, and the latter has opened a door through which Northern adventurers of the most contemptible stamp have been able to secure appointments to public office, and make use of their official positions for the sole purpose of advancing their individual and nefarious schemes. The States of Georgia and South Carolina, indeed, have been plunged into almost hopeless and irremediable bankruptcy by reason of the fact that Northern men, claiming to represent the principles and honesty of the Republican party, have warily invested themselves with the control of their governments, unwarrantably and illegally issued certificates of public indebtedness, negotiated them at a ruinous sacrifice, and, it is openly alleged and not disproved, largely availed themselves of the proceeds. These are a part of the legitimate fruits of proscription. But only a part. The Ku-klux Klans which have for the past year infested portions of the Southern States are the natural offspring of our proscriptive policy. Their diabolical creeds and practices were immediately suggested by the system

which consigned them to political banishment and invested their former subordinates with the *exclusive* possession of official power.

If we pause at this juncture and cast about us for the initiatory remedy which shall remove this ulcer from the heart of our material prosperity, the search can eventuate but in one result. The pathway out of these difficulties is the same now as it was in the spring of 1866, with the exception that one obstruction to its passage has been removed. At that period, and after the ratification of the Fourteenth amendment even, the blacks were not secure in the exercise of the elective franchise. Whether they should vote or no depended entirely upon the peculiar policy of the particular State wherein they were resident. The Fifteenth amendment, and the act of Congress for its enforcement, however, have placed the suffragan *privilege* of the prior slave population beyond the reach of State or local supervision, and transformed it into an absolute *right*. This change defeats the alleged force of the objection noticed in a prior part of this discussion, that proscription is necessary to secure the substantial benefits of the war—that without it the former rebel element would mould the structure and shape the policy of the governments of the Southern States in accordance with their own exclusive will. The question is not susceptible of doubt. The preliminary step which will most effectually inaugurate a return of the material prosperity of the *entire* country is the remedy which should have been applied in 1866, as hereinbefore stated. The appropriation for further space of its represcription is entirely unnecessary. It is universal amnesty. Its institution at this late day, even, would disband the Ku-klux, render further and similar organizations absolutely impossible, conciliate the now opposing factions of the South, transform the present and powerful proscribed classes from enemies to friends, give honest intelligence a share in the

administration of the public business and politics of the lately rebellious States, and completely reunite the industrial and commercial interests of the whole republic.

There is nothing to be gained and much to be lost by making even a single exception. If we mistake not, every applicant—at least very nearly every one who has applied to Congress for the removal of disabilities imposed by the proscriptive section of the Fourteenth amendment—has been granted his prayer. Even General Longstreet, one of the most powerful leaders of the rebellion, was not denied; and the closer the lines of our proscriptive policy are drawn, the more prominence is given to those confined within their limits. It is a prominence, moreover, as already stated, which is boasted of by many to whom it attaches. It is a patent fact of history that Jefferson Davis, in the lifetime of General Lee, ridiculed the idea of the latter accepting a pardon from the United States, as such a course would detract from his fame, and at Lee's death Davis boasted of the stoicism which made him proud of his political banishment.

A little incidental comment in reference to legislative and executive action in respect to amnesty demands a place in this connection. The act of Congress of July 17, 1862, empowered the President to grant amnesty and pardon to participants in the late rebellion, with a discretion to make such exceptions as the public welfare might seem to require. In pursuance of this power, President Johnson, May 29, 1865, issued a proclamation of amnesty and pardon to prior rebels, excepting from the operation thereof fourteen classes of persons at the South, upon condition of their taking an oath to support the Government and Constitution of the United States. *Among these excepted classes were included all the persons afterward proscribed by the third section of the Fourteenth amendment.* January 21, 1867, the provision of the aforesaid act establishing the pardon-

ing power above referred to was repealed. It will be remembered, however, that in our chronological narrative of reconstruction the fact appeared that President Johnson, subsequently not only to the date last above named, but also to the period of the ratification of the Fourteenth amendment, issued several proclamations of amnesty and pardon, the last of which assumed to give full absolution to every participant in the late rebellion. How far these last-named measures of amnesty were effectual is certainly a matter of considerable importance. For the most part, at least, they had no legitimate effect, but were an absolute dead letter. The point admits of a very simple and easy analysis. The second section of the Second Article of the Constitution gives the President "power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." Whether this power contemplated the investment of the executive with the prerogative of granting pardon to offenders who were such by reason of having taken up arms against the Government, or whether it merely intended executive pardon to attach *to such offenders against the United States* as had transgressed some *statute* thereof, and were thus criminally guilty (and otherwise they could not be, for the United States have no *national* common law in respect to crimes), *may* be a matter of doubt. Probably not, however. The latter view is the better doctrine, but the doubt, if there is any, does not, as to offenders under the Fourteenth amendment, affect the point here at issue. President Johnson issued but one proclamation of amnesty and pardon *prior to the ratification of this amendment*. That proclamation did not include any of the classes proscribed by the Fourteenth Article. Thus far there is no collision. Now, granting, for the sake of argument, that the second section of the Second Article of the Constitution hereinbefore quoted invests the executive with power to pardon persons who have taken up arms against the Government in

an open, general war of rebellion, as well as persons who are offenders by reason of having criminally transgressed a United States statute, even then President Johnson's amnesty decrees subsequent to the Fourteenth amendment, as to offenders thereunder, are clearly illegal. *The third section of that article repealed the pardoning power conferred by the second section, so far as the parties therein named were concerned*, and the executive power of pardon granted by the act of July 17, 1862, before referred to, having been repealed, the President was powerless to absolve offenders under the Fourteenth amendment of their guilt. As to those not included in the proscriptive section of this amendment, if the constitutional power of pardon contained in the second section of the Second Article, hereinbefore quoted, vested the President with the right to grant amnesty to participants in the rebellion—which can hardly be maintained—then such offenders were pardoned by President Johnson's proclamations. This point, however, is not material, as the class last mentioned are fully relieved of proscription by the act of Congress of February 15, 1871.

This is the last connection in which the name of Andrew Johnson will require to be mentioned. In no instance herein has a *personal* defence or criticism of that individual been essayed, nor will such a task be now assumed. It is entirely irrelevant to the purposes of the present treatise. The record of his official acts, however, must ever figure largely in every discussion of the measures whereunder the lately rebellious States were restored to their original relations with the General Government. Throughout this entire work, thus far, this record has been freely and impartially examined. Whenever it has seemed legal and tenable it has been frankly and candidly approved, and wherein it has appeared unsound and unwarranted it has been with equal candor condemned. Having been thus obliged to refer to the greater portion of Mr. Johnson's course

while he was President of the United States, a single word in reference to his impeachment may not be deemed superfluous. It will be merely a word. His acquittal of the charges whereof he was impeached was, without doubt, a perfectly legal verdict. He had been guilty of many *indiscretions*, which, in consideration of his high official position, were foolish and unwise in the extreme, but the attempt on the part of Congress to raise these indiscretions to the dignity of *criminal misdemeanors* was an evidence of far greater indiscretion and unwisdom. It was indeed an absolute libel upon statesmanship. There was not a lawyer in Congress who did not know—or at least ought to have known—that as a matter of law and evidence the conviction of Andrew Johnson was impossible. The only hope the legal managers of the prosecution could have had of securing a verdict of guilty must have been based upon the intense partisan spirit (which last the President had provoked) then existing against the defendant. Good policy and sound statesmanship are not evidenced by such games of chance. Reliance upon such partisan feeling for the conviction of Mr. Johnson does not place the legal managers of the prosecution in a very enviable position, it is true, but the assumption that they anticipated such conviction upon the evidence adduced and law involved is a commentary upon their legal erudition far too humiliating to admit of any other conclusion. Either horn of the dilemma is undesirable in the extreme; the former runs farthest from ignorance, and the latter nearest to honesty.

The votes of three Senators for acquittal abundantly substantiate the foregoing remarks, and, from the character and legal ability in particular of the men who cast them, outweigh every vote given for conviction. Reference is had to William Pitt Fessenden of Maine, James N. Grimes of Iowa, and Lyman Trumbull of Illinois. These three names were the true exponents of the legal ability and ma-

ture statesmanship of the Fortieth Congress. They were, moreover, the real supporters of the principles of the Republican party, and the shafts of calumny which sought to defame their character and reputation for their action in this direction proved powerless in their purpose, and recoiled upon the traducers to whom they owed their origin. The lips of the first two are sealed in a death of unexceptionable honor, but the last still lives, one of the most profound and consistent statesmen of the American republic.

Words in approval of Mr. Johnson *in any respect* will doubtless find little favor with the *mass* of our population. The author is no friend or admirer of that individual. A man of full ordinary ability and attainments, he gave evidence of many faults and foibles, and had the misfortune to succeed to the presidential chair at a time in which, by reason of the extremely delicate interests which required adjustment, it was wellnigh impossible for any man, even Mr. Lincoln, to perform the duties thereof without eliciting the sharpest censure from some portion of his constituency. Having unsparingly criticised Mr. Johnson's course in many respects, supported it in others, the writer, in his attempt to *impartially* comment upon patent facts of the past, *as a vindication of history even*, although it be at the expense of favor with his readers, was compelled, after dispassionate examination of the political issues in which the successor of Mr. Lincoln so conspicuously acted, to do him this simple act of justice; and herewith he is dismissed.

Returning from this digression, the progress of amnesty in the direction assumed to be necessary by this discussion—universal amnesty—has been thus far of little import. Several attempts have been made in Congress to establish *comparative* measures of this character—that is, a general amnesty, with certain exceptions of prominent classes—but all have failed. The last bill of this sort was defeated in the present session of Congress (the winter of 1871-72) by

tacking thereto a civil rights amendment of Senator Sumner's, which in some respects, as shown in a prior discussion of the civil rights bill that preceded the Fourteenth amendment, was unconstitutional and in every way ill-advised.

Locally speaking, however, the State of Missouri forms a noticeable and commendable exception in this particular. The constitution of 1864, framed when the interests of the State were terribly prejudiced by the presence of the late rebellion, was rigorously proscriptive in character, and denied to many of its inhabitants the privilege of the elective franchise. An election law of 1868 drew the lines of proscription still closer. In 1870, however, the fact became apparent to the more intelligent and capable portion of her people that Missouri suffered instead of profited by proscription. This view, indeed, had been held by a certain class since the election law of 1868 above mentioned; and in 1870, under the able leadership of B. Gratz Brown, who had stoutly and to his own personal prejudice advocated emancipation in 1857, and as forcibly and with marked consistency declared for equal suffrage in 1867, indefatigably assisted by Carl Schurz, the supporters thereof carried the State election, thereby securing a change in the State constitution and a consequent abolition of its proscriptive features.

As important collateral facts worthy of record in this connection, the bare statement will be made that the United States Supreme Court (January 14, 1867), in a case carried there arising under the constitution of Missouri (*John A. Cummings vs. The State of Missouri*), has held the imposition of test-oaths of loyalty by State law to be constitutional; and in another instance has held that pardon and amnesty give prior rebels a status to prosecute suits therein against the General Government. The last decision is the more important by reason of the fact that Congress, by an

act of July 12, 1870, decreed that such parties should be denied such status in this court—that this tribunal, in fact, should not have jurisdiction of cases to which such persons were parties. The subject of amnesty is here concluded.

CHAPTER IV.

FORCE LEGISLATION.

The Enforcement or “Ku-klux” Act stated—Its General Character—Construed with the Fourteenth Amendment—The Act in this Connection Irrelevant—The First Eight Amendments to the Constitution and the Bill of Rights—The Case of the Blacks—The Fourteenth Amendment runs against the States—The Enforcement Act runs against Individuals—The Act confers Executive and Judicial Powers—Unconstitutional—The Subject in this Connection fully considered—The Manner in which it Violates the Constitution—The *Habeas Corpus* Question—Invasion and Rebellion considered—Congress Illegally Construed both the Constitution and the Fourteenth Amendment—Miscellaneous Comment—The Plea of Necessity considered and refuted—The Inherent Errors of Force Legislation—The Centralization of Power referred to—The Duty of the American People—Present Tendencies—Action taken under the Law—The Scheme entirely Impolitic, as well as Illegal—The Present Condition of the South under the so-called “Carpet-Bag” Governments.

ON the 20th day of April, 1871, an act of Congress by virtue of executive approval became a law, which, although designed perhaps to serve a temporary purpose, is of such an extraordinary character and so entirely without precedent that its consideration demands a place in the part of this treatise otherwise devoted to the discussion of measures intended to institute more permanent changes in our organic and municipal code. The act bears the following title: “An act to enforce the provisions of the Fourteenth amendment to the Constitution of the United States, and for other

purposes." It is more commonly known as the Ku-klux Bill. The most that can be said for the title is, that it is very ingenious, but by no means ingenuous. The bill was passed to give United States authorities, *both civil and military, administrative and judicial*, full cognizance of private injuries to person and property, whether of a civil or criminal character, suffered within the jurisdiction of the *several States at the hands of residents thereof*. It is impossible, in a single sentence, to express the entire scope of the measure, so far-reaching and in some respects unlimited are its provisions. Guided by the above definition, however, the act will now receive consideration in both its abstract and relative bearings. For this purpose the main topic will be divided into three minor ones—namely:

I. The General Character and Constitutionality of the Act.

II. Action taken under the Law.

III. The Politic Considerations of the Scheme.

I. THE GENERAL CHARACTER AND CONSTITUTIONALITY OF THE ACT.

The point which first suggests itself for examination in the outset of this discussion is the real relation, if any, sustained by this measure to the Fourteenth amendment. The act in question never has and can in no way be assumed to supplement any portion of this article of our organic law except the first section thereof. Of this there will be no dispute whatever. True, the second section of the law presumes to protect persons in the exercise of the elective franchise. This privilege, however, was not conferred upon the prior slave or any portion of our population by the Fourteenth amendment. Punishment was provided by that article for the denial of the right to vote by any State to its citizens, but the right itself was not thereby secured. This fact appeared when the constitutional amendments were

under consideration. With the understanding, then, that the first section of the Fourteenth amendment is the only portion of that article to which this law was assumed to be supplemental, the truth of that assumption will now be considered. *Does the act bear a legitimate relation to even this one section of the Fourteenth amendment?* It does not.

The first eight amendments to the Constitution of the United States, embracing what is commonly known as the Bill of Rights, only operated to protect citizens, in respect to the civil rights therein enumerated, against the action of the General Government of the United States. These amendments in no way whatever bound the several States. When the blacks were emancipated the hostile position of their former owners necessitated a measure to protect them in their civil rights. For this end the civil rights bill examined in the chapter on Reconstruction was adopted. Its constitutionality was gravely doubted. The chapter just referred to sustained this opinion. Acting upon this doubt, and for the purpose of protecting the blacks, as well as every other element of our population, in respect to their civil rights, *against State infringement*, as the first eight amendments to the Constitution did against the action of the General Government, the first section of the Fourteenth Article was devised. What is this section? Let it speak for itself:

“ARTICLE XIV., SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

This is not only plain English, but, so far as it contains

legal or *quasi* legal terms, it makes use of those the meaning of which has been for a long time fully adjudicated. The first sentence merely declares citizenship. The remaining portion of the section, stating it very briefly, simply says that no *State* shall abridge the privileges or immunities of citizenship—that is, the rights of life, liberty and property—nor deny to any of its inhabitants the equal protection of the laws. The entire subject-matter last above referred to is merely an inhibition upon a *State*. What is a “*State*”? As already intimated, this is a term of no doubtful meaning. It is a *quasi* corporation for the purpose of administering government within well-defined territorial limits. It acts, moreover, *solely through its legally-constituted legislature or its people in general convention legally assembled*. The first section of the Fourteenth amendment places certain inhibitions upon the several States. Bearing in mind the sentence above italicized, the only way in which a *State* can violate this constitutional provision *is by its legislative or conventional acts*. But supposing a State promulgates such legislative or conventional acts as in their nature contravene this provision of our organic law, what then? Such acts are an absolute dead letter. The national Constitution is the paramount law of the land; it annuls and renders nugatory, in fact, the legislative or conventional acts of every State which are repugnant thereto. It needs—neither, relatively speaking, can it have—any *special* enforcement. It contains its own coercive power. Our constitutional law, in fact, renders the *mere existence* of this provision an enforcement thereof.

With the belief that the portion of the first section of the Fourteenth amendment now under discussion *needs* no enforcement, the question is pertinent in this connection, Does the bill now under consideration *contain provisions for such enforcement*, superfluous though they may be? In no respect whatever. This section, as already seen, com-

mands a "State." *The act above mentioned deals directly with individuals.* Every interdiction it contains runs against *individual action*, and every penalty it imposes attaches to *personal* wrong-doing. It deals with a "State" in no respect whatever, whereas the first prohibitory portion of the Fourteenth Article refers exclusively to such corporations.

The irrelevancy of this act to the Fourteenth amendment seen to be apparent, its actual provisions will now be considered. As stated in the opening remarks of this discussion, the law in question assumes to give the executive and judicial departments of the General Government jurisdiction of private wrongs resulting from the relations of the citizens of any several, separate State of the Union. In other words, the act assumes to confer special powers in this direction upon the national executive and judiciary of the following description—namely :

EXECUTIVE POWERS.

The right of the President under certain circumstances, *upon his own suggestion alone*, to call out and employ the militia *in time of peace*.

The right, *in time of peace*, with unlimited discretion, to employ the land and naval forces of the country for the prevention of private wrongs.

The right, *in time of peace*, to suspend the writ of habeas corpus.

JUDICIAL POWERS.

The right of the United States courts to take cognizance of private wrongs committed within State jurisdiction.

The further examination of this subject, in this immediate connection, will be considered in the following order :

1. The constitutional right of Congress, if any, to confer the powers above described.

2. Miscellaneous remarks upon the provisions of the act in general.

1. The first and second of the executive powers above defined are contained in the third section of the act. Confining attention for the present to the first named, this section of the law, after enumerating certain conditions of things, authorizes the President, of his own motion, to call out and employ the militia *for the suppression of disturbances within State limits*. The end sought by the exercise of this power is impartially and fairly stated in the words above italicized. Of this there can be no dispute. Congress, therefore, in assuming to confer this power upon the President, seeks to enforce its legislation within the territorial limits of the several States. As has been repeatedly shown in prior discussions of this treatise, such measures of Congress, in order to be legitimate, must find a sanction in our national charter, in our organic law. The Tenth Article of the original amendments to the Constitution forbids the General Government to enforce its legislation within the several States except in special cases provided therein. Is there any such special provision in the Constitution authorizing Congress to empower the President to call out and employ the militia in the manner indicated by this first-named executive power—the suppression of disturbances within State jurisdiction? There is not. The only portions of the Constitution under which Congress can authorize the President to employ the militia are the fifteenth paragraph of the eighth section of the First Article and the fourth section of the Fourth Article—namely :

Congress shall have power—

“To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.”

“The United States shall guarantee to every State in this Union a republican form of government ; and shall

protect each of them against invasion, *and on application of the legislature, or of the executive* (when the legislature cannot be convened), *against domestic violence.*"

It is perfectly apparent that the present act does not authorize the President to employ the militia "to execute the laws of the Union" or "repel invasions." There is no law of the Union which the act assumes or declares to have been violated, except a portion of the Fourteenth Article of our Constitution; and this assumption, as will hereafter appear, is entirely unfounded. As to the repelling of "invasions," the simple meaning of the term refutes the idea that this power was created for that purpose. An "invasion" can only come from without; its existence can in no way be predicated upon the action of the resident population. This executive power in reference to the militia, moreover, as conferred by Congress, although at first thought it may seem doubtful, finds no warrant in the constitutional authority to institute such action to "suppress insurrections." The word "insurrection" in this connection contemplated acts of violence against the United States, against the authority of the General Government, *and not against the laws or authority of a separate State.* This point needs no discussion; the proposition is fully substantiated by the fourth section of the Fourth Article, above cited, wherein the only cases in which the General Government shall lend its aid for protection "against domestic violence," against disturbances within State limits, are plainly expressed—namely, "On the application of the legislature or the executive" of such States.

This first executive power, moreover, is not sanctioned by the fourth section of the Fourth Article as above quoted. The law in question does not presume to authorize the President to employ the militia "to guarantee to the States a republican form of government;" and the closing por-

tion of the section places an actual inhibition upon such use of the militia, except upon application of the legislature or executive of any of the States.

These provisions of the Constitution have been reviewed in connection with this first executive power of the act more for completeness' sake than on account of any claim that this power was sanctioned by these provisions. The portion of the Constitution invoked by Congress to legalize its action as to this power is the first section of the Fourteenth amendment. The scheme was specious, but is in no way tenable. This portion of the Fourteenth Article simply says, in substance, that no State shall make or enforce any law which shall abridge the privileges or immunities of its citizens, nor illegally deprive them of the rights of life, liberty and property, "*nor deny to any person within its jurisdiction the equal protection of the laws.*" This inhibition, let it be remembered, runs against a "*State,*" and with this fact in mind the question put in an earlier part of this chapter requires repetition—namely, How does a "*State*" act? In what manner can it violate the first section of the Fourteenth amendment? In what way can it deny to its inhabitants the equal protection of the laws? Only, as already shown, through the official action of its legislature or the expressed will of its people in general convention legally assembled. A "*State*" is neither a mob, a company of Ku-klux nor an association of what are vulgarly termed "*carpet-baggers.*" It can *only act*, can only deny to its citizens the equal protection of the laws, if legal authority and precedent is to be our guide, in the two methods above described. Congress, however, seeks to throw the mantle of the Constitution around this first executive power now under consideration by declaring that such and such circumstances—personal quarrels, personal injuries, private wrongs, violations of State ordinances, etc. etc.—"*shall be deemed a denial by a State to its citizens of*

the equal protection of the laws." In assuming this position Congress oversteps the bounds of legislation and trenches upon the field of judicial power. Congress is not a court except for the trial of impeachments. It can enact laws for the United States, *and legally declare that such and such acts shall be deemed a violation of those laws*, but it cannot step into the territorial limits of a State and legally say that *such and such a condition of things shall be deemed such and such action on the part of a State*. The mouth of a State is its legislature or general convention, and Congress is powerless to make a gang of desperadoes its legitimate spokesmen. If we admit the position, where shall we stop? If Congress can legally say that local acts of violence within State limits shall be deemed a denial by such State and its inhabitants of the equal protection of the laws, why can it not put a similar interpretation upon the refusal of a man to let another fish in his stream?

The only proper deduction to be made from this brief discussion is, that the first executive power raised by the act violates the Constitution of the United States by authorizing the President thereof to employ the militia within State limits *upon his own motion in a time of general peace*, while our national charter sanctions such action only in cases of insurrection against the General Government, invasion from without, the enforcement of the laws of the Union, and, upon request of a State legislature or executive, for the suppression of domestic violence.

In reference to the second executive power very much the same line of reasoning applies as that above dismissed. This power is raised by the same section of the law as the first (the third section), and they constitute, in fact, an alternative from which the President is permitted to choose. In other words, under the third section of the law, certain conditions of things hereinbefore enumerated having been deemed by Congress a denial by a State to its citizens of the equal

protection of the laws, the President may either call out and employ the militia, *or* summon the regular land and naval forces of the country to counteract this alleged denial of the protection of the laws—that is, *to suppress domestic violence, to secure the prevention of private wrongs*. The same argument which proved that the first executive power found no constitutional warrant under the provisions of the Fourteenth amendment serves, in every respect, a similar purpose in this connection. Repetition of that discussion is unnecessary, and the only inquiry here pertinent, therefore, is, Does the second executive power of the act find a sanction in any other portion of the Constitution? As this power, for the same reasons stated in the discussion above referred to, looks in vain to the portions of our organic law quoted in the opening remarks of this chapter for constitutional authority, and as these are the only other provisions bearing either directly or indirectly upon the subject, the answer to this question is found in a statement of the constitutional provisions which authorize the President *to employ military and naval force*. This answer, moreover, is in no way ambiguous. It is a simple question of war and peace, and the second section of the Second Article, as it is the only provision conferring authority upon the executive to employ the land and naval forces of the country, furnishes a key to the entire situation. This section declares that “the President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States *when called into the actual service of the United States*.” Of the meaning of this last clause there is no doubt whatever. It contemplates a state of open hostility against the General Government, *and not a state of insurrection against State authority—not a condition of “domestic violence.”*

The second executive power of the act, therefore, violates the national charter in that it authorizes the President, *in a*

time of general peace, without any restriction, to employ the regular land and naval forces of the country for the prevention of private wrongs within State jurisdiction—for the suppression of domestic violence; whereas the Constitution sanctions such action only in case of actual war or to maintain the supremacy of the United States law. Let it not be said, in this connection, that the act contemplates a maintenance of such supremacy because it assumes to provide for the enforcement of the first section of the Fourteenth amendment. It will be remembered that in the discussion of the first executive power it fully appeared that the act had no relevancy to this constitutional provision—that this portion of the Fourteenth Article, indeed, had not been violated—for the reason that said amendment deals entirely with “*States*,” while the act is addressed solely to *individuals*.

The third executive power—and one, in many respects, more dangerous than the other two—is found in the fourth section of the law. It is the power conferred upon the President, in a time of peace, to suspend the writ of *habeas corpus*. The entire history of American legislation furnishes no instance of such open departure from both the letter and spirit of our organic law as is afforded in this fourth section of the act. This bulwark of English liberty, which was wrung from the unwilling hand of Charles II., transported as a sacred trust across the Atlantic by the pioneers of the American republic, and declared by the framers of the Constitution to be a principle of American freedom which should ever be held inviolate except in cases of actual rebellion or invasion, is here ruthlessly set aside without any show of either reason or legal precedent. This section, indeed, strikes a direct and terrible blow against the very foundation of American and republican institutions. The diabolical acts, and the dastardly character of their authors, against which the provisions of this

section are aimed, furnish no excuse for its adoption. It was a grave sacrifice of principle, an establishment of a most dangerous precedent. Two wrongs will not make one right. If the writ of habeas corpus may be suspended in time of peace for *one* purpose, by what criterion are the exigencies to be defined in which it shall *not* be withdrawn? Where is the boundary-line? At what point shall we stop when once we have overstepped the limits of constitutional warrant? It is of course alleged that this section of the law, like the remaining ones, is sanctioned by our national charter. This position we will now proceed to combat.

The Constitution provides that "the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." As Congress could not even assume with any show of reason to clothe this fourth section of the act with constitutional sanction by alleging an "*invasion*," it proceeds to inaugurate a "*rebellion*" by *force of legislative enactment*. Of the popular and legal meaning of the word "*rebellion*" there is no dispute. It is a total renouncement of allegiance to governmental authority, evidenced by acts of open hostility or war. The national Constitution is the fundamental law, strictly speaking, *of the United States*, and *not* of any one of the several States. This proposition must not be misconstrued. It is not intended for an assertion that a State constitution repugnant to our national charter can have a legal existence—that the organic law of any one State can override that of the United States. It is merely intended to convey the idea that the provisions of our national Constitution refer solely to the General Government, to the United States, except in cases where the States receive particular mention. The constitutional provision above cited, therefore, means that the privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion *against the General*

Government or invasion thereof. It in no way contemplates a rebellion against State authority. Congress makes an explicit admission of this statement in the words of the fourth section of the law, which declare that combinations and conspiracies against *State* authority, etc. etc. *shall be deemed a rebellion against the United States*. Recalling, moreover, the meaning of the term "rebellion," this constitutional provision further means that the writ of habeas corpus shall not be suspended (saying nothing of invasion) except when offending parties are arrayed in open hostility against the General Government.

The inquiry is pertinent in this connection, Can Congress legally declare that to be a rebellion against the United States which the Constitution thereof implicitly says is *not* such rebellion? Upon the answer to this inquiry hinges the constitutionality of the section of the act now under consideration. The answer is an emphatic negative. It cannot. Propositions stated in a prior connection are here worthy of substantial repetition. Congress is not a court except for the trial of impeachments. It can legislate, and thereby enact laws for the United States, but in so doing it is bound to take the Constitution for a guide. It is powerless to attach the legalizing force of that instrument to enactments which the instrument itself implicitly declares to be illegal. It is powerless to put a meaning upon the instrument which the words thereof expressly deny. It is powerless to declare that the existence of private wrongs within State jurisdiction is in fact a rebellion against the United States, when the Constitution expressly says that such rebellion only exists in cases of open hostility to the authority of the General Government. Yet this is precisely what Congress has assumed to do in the fourth section of the act. It has addressed itself to the task of making rebellion by legislation. It has assumed to sit in judgment upon the character of private wrongs against State authority.

It has arrogated to itself the prerogative of a legal tribunal—of judicial power. The provisions of the fourth as well as the first section of the act are measures of precisely similar import as the act of Congress of July 12, 1870, which the Supreme Court has declared unconstitutional and void, as seen in the concluding remarks of the next preceding chapter. The decision of the court is peculiarly pertinent to the matter now at issue. Congress here, as in the act above named, overstepped the limits of legislative power and essayed the office of a court of judicature.

The same inquiries which closed the examination of the first executive power of the law are equally appropriate in this connection. They may all be merged into one single interrogatory—namely: If we once establish the precedent of allowing Congress to *forcibly* throw the mantle of the Constitution around measures which that instrument declares to be beyond its sanction, where is the watchman who shall either possess the right to call for a stay of such proceedings or the power to enforce his command?

The third executive power of the act violates the Constitution of the United States in that it makes that a rebellion which is not a rebellion, and authorizes the President to suspend the writ of habeas corpus in a time of peace, whereas our organic law sanctions such an expedient only in cases of open hostility or actual war.

In respect to the judicial power conferred by the act very little need be said. It is not such an unblushing violation of our organic law as the executive powers which have just passed from consideration, yet it is equally absolute. The jurisdiction of United States courts, by force of the second section of the Third Article of the Constitution, legally attaches to all causes arising under the "*laws*" of the United States. The act in question, speaking in the abstract, is undoubtedly such a law. But the vital question

here presents itself, Is the law sanctioned by constitutional warrant? A statement of the character of this law as connected with this judicial power furnishes a guide for the solution of this inquiry. The act in this respect assumes to confer full civil and criminal jurisdiction of private wrongs, of local injuries to person and property—*of acts of domestic violence*, in short, suffered within State limits—upon the courts of the United States. Congress here ventured upon an entirely new field of legislation. Never in the history of our country has a legislative act assumed to confer such jurisdiction upon our national tribunals. The entire spirit and tenor of our organic law, the decisions of the Supreme Court thereunder, as well as the genius and spirit of our institutions, absolutely prohibit such enactments. The Tenth Article of the original amendments to the Constitution requires citation in this connection—namely: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.” In no portion of our national charter is the power to take cognizance of private wrongs within State limits—*of domestic violence*—conferred upon the General Government or prohibited by it to the States. This prerogative, consequently, rests solely in the hands of the several States or the people. Congress, moreover, by the words of the act itself, admits that such has been not only established usage, but acknowledged law, down to the adoption of the Fourteenth amendment. It seeks, however, to legalize this judicial power under that article of our organic law in the same manner in which it essayed to clothe the executive powers of the act with constitutional sanction. The attempt, as already shown in the case of the executive powers, was entirely *extra-judicial* and unsound. It is equally so in that of the judicial power now under consideration. The argument above referred to needs no repetition in this con-

nection. It is in every particular, however, entirely applicable to the question here at issue, and may be referred to as occasion suggests. Congress here, as there, assumed to declare the acts of *individuals* the acts of a *State*, and thereby, by sheer force of ordinary legislation, establish the fact that certain citizens were denied by the States in which they were resident the equal protection of the laws. It abandoned its legislative prerogative and unwarrantably essayed the exercise of judicial power.

The judicial power of the act, therefore, violates the Constitution of the United States by reason of the fact that, like the executive powers of the law, it illegally extends, or rather assumes to extend, the operation of the Fourteenth amendment from States to individuals, and confers a jurisdiction upon the national tribunals which, as the law itself is repugnant, is derogatory of the spirit as well as the letter of our organic code.

2. A very little miscellaneous comment upon this scheme of legislation is now in order. For the support of this measure was adduced the specious and very stubborn argument of necessity. It was, in other words, the plea of self-preservation, and one well calculated to procure for the law the indorsement of every loyal and patriotic heart. For the dastardly and cowardly *offences* of the Ku-klux Klan *in themselves, in the abstract, per se*, or for the authors thereof—although the latter can plead a *reason*, but not an *excuse*—this chapter offers no defence whatever. Viewing them in their isolated relations, disconnected from all concomitant circumstances, there are no words too severe to adequately define their wickedness. The gravity of the offences, and the moral turpitude exhibited by their perpetrators, furnished a strong argument for resorting to almost any means to stay the tide of domestic violence which devastated certain localities of the South in the spring of 1871. It was an argument, moreover, which to the un-

thinking masses of our loyal population, engrossed with the cares and anxieties of business-life, would very naturally appear to be sound and wholesome. Stripped of all collateral considerations, it is not surprising that the question, in such connections, might seem to present but one alternative—namely, either permit the Ku-klux Klans of the South to work its total destruction, or else employ the strong arm of the General Government to compel them to stay their hand. It was not an argument, however, which should have commended itself to the judgment of men whose sole business was to guard and promote the welfare of the body politic. It was not an argument which should have received the indorsement of deliberate legislation. *It was not an argument which could have possibly met the approval of statesmen.*

The American people live, or are supposed to live, under a Government of fixed and determinate laws. The municipal code of this Government is shaped, or is supposed to be shaped, by the letter and spirit of our national Constitution. It is a matter of the greatest possible import that the last-named proposition shall receive not even a constructive violation. Every successive act which tends in that direction opens more widely a door through which anarchy will ultimately enter, and consign the cause of constitutional government to a forced and unmerited oblivion. Every law, indeed, which cannot draw to itself the complete and unqualified sanction of our national charter actually offers a premium upon just such lawlessness as the present act of Congress was devised to prevent, and establishes a precedent which *must surely compel law to give place to force.* It cannot be otherwise. In their fixity lies the safety of all forms of government. This fixity is sought in despotic governments by making the will of the sovereign absolute, without any right of appeal. It is sought in constitutional governments by making the governmental charter, the or-

ganic law, the exclusive guide of governmental action. Qualify the will of a monarch in *one* direction, depart from the provisions of a constitution in *one* instance, and who shall presume to hold that similar action shall not be taken in another? Where is the watchman who shall have the sagacity to determine when the ultimate limit of such departure shall have been reached, and, more difficult still, will he be respected when he speaks?

From the foregoing principles the act was a total and unqualified departure. It ignored them in every important particular. The question is too plain to admit of doubt. So long as the people of this country assume to live under a constitutional form of government, just so long must they see to it that their organic law is preserved inviolate, or else incur the penalties, already stated, which will invariably attach to its violation. So long as our national charter confers the exclusive jurisdiction of local, private wrongs upon the State tribunals, and vests in State authority the exclusive supervision of acts of domestic violence, just so long should those prerogatives be *exclusively* exercised by these local powers. The only legitimate way to here establish a new system or extend the old is by an amendment to our national Constitution.

Whether or not it is desirable, at this epoch of our history, that the General Government should have its authority extended over many institutions of comparatively local import which it is now powerless to control, is one of the gravest questions which the American people are called upon to solve. The inquiry is, in this connection, neither denied nor affirmed. No portion of the preceding discussion, moreover, should receive such an interpretation. The numerical and territorial proportions of this republic have been enormously extended since the formation of our original organic law. Subsequent to that period the number of our States has nearly trebled; our population has in-

creased from four to forty millions of people ; Cuba, like a ripe apple, is ready to drop into our waiting hands ; and British America, under the irrepressible force of natural law, will ultimately seek to link her destinies with the young giant of the Western World. In view of these present and prospective facts the necessity of a more centralized government is a question which cannot be treated with simple silence. Upon the horizon of our almost immediate future, indeed, the hand of progress is tracing the inquiry, For large masses of people, scattered over wide territorial limits, are republican governments a success ? The affirmation of this interrogatory is the dearest wish of every American heart. With the future of the United States comes the solution of the problem, and for that solution the nations of Christendom anxiously wait.

In view of our delicate position—and that it is delicate no thinking mind can deny—the paramount duty of the American people is to inflexibly pursue the course which, as a republic, will alone assure us present safety and future existence—namely, protect the *fixity* of our form of government. The attainment of this end is possible only by giving the most complete and cheerful obedience to the mandate—*Stand by the letter of our organic law*. If exigencies require that our General Government should be endowed with more ample prerogatives, change our national charter and let the needed power be conferred ; but by all means cease the dangerous attempts which the act now under discussion strikingly illustrates, and which, for the last four years, have followed each other in too close succession, of endeavoring to *smuggle* within the limits of the Constitution schemes of legislation which the simple words of that instrument declare beyond its sanction. Upon all other questions let the utmost latitude of opinion be allowed, but let him who seeks to foist upon our statute-book a law which defeats if but a letter of our organic code be instantly re-

tired from the public service and counted among the vilest traitors of the republic. Abide by the Constitution, and the republic lives; destroy it, and it will soon sleep in the embrace of death.

Looking more particularly to the argument of self-preservation which was urged in support of this act, very little need be said. Neither the force nor the truth of the abstract argument is denied. It is not pertinent, however, to the present discussion. Congress in the spring of 1871 was no more called upon to adopt schemes of legislation founded upon the policy of self-preservation than it was to declare war upon British America. The destruction of the American republic threatened by three thousand Ku-klux! It had just crushed to atoms a rebellion which counted eight millions of supporters. It had just crushed that rebellion, moreover, simply because it violated the national Constitution—simply because, in principle, though with a degree of moral turpitude incomparable it is true, it furthered schemes which, like the present act of Congress, tended to the utter demolition of civil authority.

There is a politic argument pertinent in this connection, but as that view of the subject has been made a distinct and the final sub-subject of the present chapter, it will only, for completeness' sake, here receive a passing mention.

This miscellaneous comment upon the general provisions of the act will be concluded with the single remark that the measure is characteristic of present tendencies, upon the slightest provocation, to supplant civil with military authority. From the spring of 1861 to the opening of the year 1865 such a policy was often indispensable. *But for the last seven years we have had peace*, and to civil government belongs the right to reign exclusive and supreme. The act now under consideration, however, would seem to indicate that Congress at the time of its adoption thought itself again traversing the summer of 1863, and the military

interference on the part of the General Government with the prerogatives of Governor Palmer at the time of the Chicago fire that General Grant still considered himself on the high way to Appomattox.

II. ACTION TAKEN UNDER THE LAW.

In respect to the action taken under the law nothing will be said except in the way of narrative, and only the more important events will be stated.

On the 3d of May, 1871, the President issued a proclamation defining his position and views in reference to the act in question. The first arrests in pursuance of the law were made May 6, 1871, in North Carolina. These were quickly followed, by virtue of executive order, by others in South Carolina, Kentucky, and, in very small numbers, in a few other localities of the South. The principal theatre of operation, however, has been in North and South Carolina, about seven hundred arrests having been made in these two States, and the prisoners awarded a trial in the United States courts. It is needless to say that in all cases the alleged criminals have been proved unqualifiedly guilty of the charges made against them, and, abstractly speaking, fully deserving of the penalties prescribed by the act. In October, 1871, executive proclamation declared nine counties of South Carolina to be in a state of rebellion, proclaimed martial law and suspended the privilege of the writ of habeas corpus therein. This locality, at the present writing (March, 1872), is still subject to the force of the executive decree above named. This privilege of the writ of habeas corpus, however, by an express provision of the act, must be restored at the close of the present session of Congress.

III. THE POLITIC CONSIDERATIONS OF THE SCHEME.

The concluding remarks of this chapter require very little extension. Much that was said in the next preceding

one in reference to the desirability of a complete and general amnesty is peculiarly pertinent in this connection. Repetition of that comment is entirely unnecessary, and will be essayed in no respect whatever. In the adoption of the present measure of force legislation Congress seems to have forgotten one very important particular—namely, that the Southern States were considered a portion of the Union, were expected to remain an integral part of the American republic, subject to the laws of the General Government, and relied upon for a hearty and *natural* co-operation in the work of advancing the general welfare of the country. Was the spirit of this measure consistent with such expectations? Was it an adequate or approximate means for securing the desired end? There are two methods, as hereinbefore stated, of governing states and people. The one is by sheer force—the other by wholesome inducement, by inaugurating such a condition of things as will change the motives of individual action. The two cannot go hand in hand. They are entirely antagonistic, both in principle and practice. One or the other must have absolute and exclusive sway. The first requires constant reinforcement—the second, once established, continues its existence by force of its own momentum. The one is a pursuance of the aphorism that “might makes right”—the other that the assurance of a betterment of condition is the strongest motor-power. The former rules by reason of brute strength—the latter by virtue of common consent. The government of force requires all its energies to prolong its present existence—that of inducement can direct its entire resources to the extension of its interests. The subjects of the one obey because they *must*—those of the other because they *will*.

It may be otherwise, but the so-called Ku-klux bill appears to scout the truth of the foregoing statements, both in their abstract and relative bearings. We cannot wed mili-

tary to civil authority in the South. The people thereof can be *compelled* to do thus and so, of course, but the system of compulsion once inaugurated, when shall it be withdrawn? Can it be supposed that this portion of our population will warmly espouse the interests of the General Government when the two cardinal features of the policy of that Government toward it are proscription and military and martial law? It is impossible. The people of the South must be regarded as friends, and treated accordingly. *What they have been or done, if we look to them for aid in the promotion of the general welfare, is, in the light of policy, of no sort of consequence whatever.* The day of punishment for prior misdeeds is past beyond every possibility of recall. The intelligence of Christendom will not *now* tolerate the idea, however much it would have approved it at the immediate close of the rebellion. There is no possible escape from the conclusion—it is inevitable: Enlist the sympathies of the Southern people by elevating their condition to one of equality with the rest of our population, or we shall jeopardize the general welfare of the nation.

The force of the foregoing is made more apparent by a simple glance at a subject peculiarly germane to the one now under discussion. In the winter of 1871-72 (a fact which should have been stated in a prior connection) a joint select committee was appointed by Congress to investigate the condition of things in the late rebellious States, from the alleged character of which the present act had been declared a necessity. The report of this committee fully justified, so far as the extent and enormity of the Ku-klux outrages were concerned, the statements which had previously emanated from more private and unauthentic sources. No *excuse* is here offered for those villainous proceedings. This joint select committee appointed a sub-committee for the purpose of investigating the financial condition of the States which had participated in the late

rebellion, and the status of things disclosed by the report of this committee was deplorable in the extreme. Space will not permit either its full citation or extended comment upon its revelations, but as regards the finances of the Southern States under the management of their present governments very few of the more salient facts are worthy of particular attention. Reference will be first had to Louisiana, and for this purpose we make an extract from the New York *Nation* of August 3, 1871. It says: "Between 1850 and 1860 the State tax in Louisiana ranged from twenty-one cents on a hundred dollars to twenty-nine cents. In 1865 and 1866 it was thirty-seven and a half cents; in 1867 and 1868 it was fifty-two and a half cents; in 1869 it was seventy-five; in 1870 it was \$1.45; and for this year it will be considerably more than \$2. Next, it is to be considered that while the taxes have thus been increasing the State's expenditures have been constantly in excess of the receipts. Mr. James Graham, the State Auditor, certifies that the excess in the fiscal year ending in 1871 is \$8,778,618.15, making the total debt of the State nearly \$49,000,000. At the breaking out of the war Louisiana had a debt of \$10,000,000; in 1868 this was \$14,500,000; in 1869, \$22,500,000; in 1870, \$41,000,000; and, as we have said, in June, 1871, nearly \$49,000,000. Formerly, before 1860, a sixty-days' session of the legislature cost from \$100,000 to \$200,000; the regular session and extra session of 1870 cost more than \$750,000; and the regular session of 1871 cost more than \$9,000,000. The State Treasury supported at a cost, in 1870, of \$432,000, and in 1871 of nearly \$400,000, about thirty sheets (newspapers in name), printed in the country districts, and in great part conducted by members of the legislature."

Look now to South Carolina; and we again take from the *Nation* an extract of its report of a convention of *tax-*

payers, men suffering under proscription, which met at Columbus in the summer of the same year. The *Nation* says: "The first thing the convention did was naturally enough to look into the condition of the State finances, and its reports on this point will furnish a good study to those who are interested in what we may call morbid politics—that is, the politics of sick societies—for its resemblance to the financial exhibits which municipal reformers occasionally lay before the public in this city is very curious, particularly in the item of salaries, which, we need hardly say, have all risen greatly. The committee of the convention compares the amounts paid in 1866, when the new régime was established, and those paid this year, and the way the increase is distributed gives one an instructive glimpse of the carpet-bag ideas about administration and carpet-bag ways of estimating the value and importance of services. For instance, the governor's salary remains the same, \$3500, and the annual amount paid to the judges is actually diminished from \$30,000 to \$28,000, though there is a slight increase in the salaries of the chief-justice and the associate justices. But the expense of the secretary of state's office, including his salary, rose at one jump from \$500 to \$4000. The adjutant inspector-general, who has, we believe, no duties, and is to himself a hollow mockery, cost the State nothing in 1866, but now the sorry wag pockets \$2500 a year. The treasurer's office used to cost \$3200 a year—it now costs \$5800; and the attorney-general used to cost \$1100—he now costs \$4000; the clerk of the court of appeals used to cost \$800—he now costs \$1500. The 'solicitors,' whatever they are, used to cost \$4500, but the State now pays them \$8000. 'The auditor of state,' apparently a new officer, gets \$4000. But the gem of the accounts is the item called 'Legislative Expenses,' to which we have, however, called attention in the *Nation* before now. These were in 1866, \$45,850, and less, we believe,

previously; in 1871 they were \$400,000. Of this enormous sum we believe a large portion is drawn from the treasury on the Speaker's order, or that of the president of Senate, in advance of any appropriation. The most taking item in the account, which in many ways surpasses anything to which we have been treated in New York, is \$15,000 to a 'commission to codify the laws,' the duties of which, the report says, 'might be discharged by a clerk;' which is either a severe reflection on carpet-bag jurisprudence or very high praise of it. Laws that a clerk can codify were either not worth making, or were so well made that he who runs may read them. Finally, the State taxes of the year reach \$2,000,000, as against \$400,000 before the war, while the value of the taxable property is diminished by one-half."

Georgia is in a condition worse, if possible, than either Louisiana or South Carolina, and the following—as alleged and not disproved—is the present status (the spring of 1872) of a few of the *Northern* men who have been elected under our proscriptive policy to administer the government of the *Southern* States. The governor of Texas is indicted for fraudulent issue of election certificates; the governor of North Carolina has been impeached for theft and removed from office; the governor of Georgia has retired from office to escape a similar fate; the governor of South Carolina is an embezzler of the State funds to an enormous amount; the governor of Florida is on trial for stealing railroad bonds; and the governor of Arkansas, openly charged with frauds which are not disproved, is precipitating his State into hopeless bankruptcy.

These are a very few of the many enormities which Northern politicians have been and are still committing throughout the South under the name and fame of Republicans. In view of these facts, do we not see a reason, though not an excuse, why the Ku-klux Klans have assailed

the parties who, innocently in many instances it is true, and altogether by virtue of our policy of proscription, have elevated such miscreants to places of official trust? Moreover, are the precedents established by the act in question, as seen in the main discussion of the subject, such as the American people will feel willing to sanction if a man of inordinate ambition shall chance to be elevated to the magisterial chair of the nation?

CHAPTER V.

CIVIL SERVICE.

“To the Victor belong the Spoils of the Enemy”—The Origin and Significance of the Phrase—Civil Service defined—The present Institution wholly a Political One—The Status of the President and Congress in relation thereto—The Defects of the Present System—It Rests upon Political Influence—Merit Entirely Discarded—Its Enervating Effects upon the President—The Same as to Members of Congress—The Same as to Members of the Service—A Continuous Chain of Self-interest from the President to the most Petty Official—The Operation of the System viewed—How it Bears upon Elections—Political Assessments—The System a Slavery of Opinion—A Statement of the Number, Grade and Salaries of Officials Engaged in the Service—Civil Service Reform—Attempts in this Direction so far Failures—Measures Necessary for an Adequate Reform—They consist of Twelve Changes in our Organic and Municipal Code—The Same Discussed at Length—Criticism of the Report of the Civil Service Commission—It is both Inadequate and Impracticable—The Worth of Oral or Written Examinations considered—The Machinery by which the Same are to be Conducted—It Opens more widely the Door for Fraud and Abuse than the Old System—“Political Pressure” not Overcome, but Encouraged—A mere Machine for Party Aggrandizement.

“**T**O the victor belong the spoils of the enemy.” In the year 1832, when Andrew Jackson nominated Martin Van Buren minister to England, William L. Marcy of New York, in arguing for his confirmation, gave utter-

ance to the sentiment above quoted. It has not only, so to speak, become a household word with the masses of the American people, but also, since the year above named, has constituted the entire code for conducting the civil service of this republic. Prior to that period our Government kept this service wholly distinct from questions of politics. Mere political status was not a requisite, nor even a recommendation, for position therein. The sole criterion by which such positions were filled was the fitness and capacity of the applicant therefor. Removals were made only for cause, and were consequently of rare occurrence. This was particularly the case under Washington's administration, as the first President was peculiarly a President of the people, and not of a party. The elder Adams followed the same rule of action, and with comparative freedom from the importunity of office-seekers. With the inauguration of Jefferson, however, the old Federal party, as represented by Washington and Adams, ceased to exist, and the Democratic organization assumed the reins of government. With this change in the political character of the national administration the supporters of the Democracy loudly clamored for the places in the civil service of the nation. Jefferson, however, was inexorable, and put upon record his memorable declaration that "The only questions concerning a candidate shall be—Is he honest? is he capable? is he faithful to the Constitution?" Madison, Monroe and the younger Adams pursued the same policy, but Andrew Jackson, like all the military men which this country has elected to the position of chief executive, had no regard for precedent, and not much greater for law. With his administration, as already stated, was established our present system of civil service, the discussion of which will now be essayed in the following order—namely :

- I. Outline of the Present System ;
- II. Its Defects, and their Remedy ;

III. Criticism of the Report of the Civil Service Commission.

A single prefatory remark is pertinent before entering upon the general field of inquiry as above designated. By the term "civil service" is meant that portion of the administrative department of our Government wherein the officials secure their positions by appointment instead of election by the people. In the future discussion of this subject, therefore, whenever the administrative branch of the Government is referred to, let it be remembered that such reference is impliedly qualified by the restriction contained in the above definition of the subject of this chapter.

I. In respect to the general outlines of our present system, it is too familiar to every intelligent citizen to require a detailed analysis. Of its merits very little can be said, and as its defects will be made a special subject of consideration under a distinct and separate heading, it is simply necessary in this connection to indulge in a comprehensive statement of the more prominent features of the scheme.

Our civil service, as it now exists, is emphatically and solely a political institution. Its management is prompted by political expedient alone. It is a means for the attainment of a certain end, and that end is a perpetuation of the power of the dominant party. Political status is an absolute prerequisite, and individual fitness and capacity a perfect non-essential, for official place in this department. The efficiency of this administrative force is regarded as wholly unworthy of consideration. The question is, Can and will the several members help to assure the continued elevation of the ruling party? and not, Are they in any respect capable of performing the duties incumbent upon the respective positions to which they are assigned? The President of the nation, whether the people will or no, is

seldom so free from motives of personal ambition but that he is bending every effort for a re-election. It is consequently of the first importance to him to retain the friendship and support of members of Congress. These latter individuals also are rarely so forgetful of self-interest as to make a prolongation of their official existence a *secondary* object of consideration. Their paramount duty, therefore, consists in advancing the personal wishes of their constituents. This constituency, moreover, receive their appointments under the General Government through the intercession of their Representatives and Senators in Congress. Thus it is, if we may be allowed so strong a qualifying word, that the staff and rank and file of the ruling party are constantly acting in a *vicious* circle, the principal end of which action is their own individual aggrandizement. Hence, to refuse either the executive or these national legislators an unqualified support is absolutely suicidal to the personal interests of every member of our civil service. The President stands in constant fear of every Congressman, lest the latter shall array his constituents to oppose his re-election; the national legislators must answer the beck of their constituency for official place, or give way to successors who will prove more faithful to their trust; the electors of both Houses of Congress must faithfully support not only the President, but the respective members thereof, or suffer the penalty of removal from official position. Every one of these three elements, in short, owes absolute obedience to the remaining two, and upon that single thread hangs the entire system of our civil service.

The foregoing statements are not an exaggeration of the general outline of the system. They do not, of course, include, neither were they intended to, a detailed description of either the form, manner or result of its operation. These must all necessarily appear in the examination of the defects of this system in the second sub-subject of this

chapter, and a desire to avoid repetition accounts for their absence in this connection. Briefly, then, to recapitulate, the prominent features of our civil service system are as follows—namely: The institution is purely a political one, and its sole object is the maintenance of party power; the appointing prerogative is vested in the President, the heads of Departments and other major officials, requiring, in some instances, confirmation by the Senate or other high authority; the criterion by which the appointing power makes its selections is the ability of applicants to promote purely party interests; the motive which prompts to appointments is a desire for re-election; and the advisory counsel in the case are the Senators and Representatives in Congress. The character of the opinions given by this advisory board is measured by the intensity of the wish of its members to retain their seats in the next succeeding legislature, and the only aim of the appointees is to further the personal political welfare of the President and the national legislators who represent their State and district in the councils of the nation.

II. The defects of this system and their natural adequate remedy will now engage attention. These defects are plainly foreshadowed by the remarks which have been just dismissed, but a little reflection renders their gravity still more apparent. The vulnerable points of the scheme all originate from the fact that *influence* is the corner-stone whereon the entire system rests. Every other element and consideration which naturally demands a place in the supervision of our civil service is wholly lost sight of in canvassing the influence possessed by all the parties to the scheme, for scheme indeed it is. This single stubborn fact taints the entire administrative force of the Government, both in and out of the civil service, from the President down to a postmaster of a country village. On the one hand are seen the almost frantic endeavors of appli-

cants to either secure the necessary political support to insure an appointment, or to retain such support when once secured; and on the other is manifest the constant vigilance of the appointing agency, whether it be the President, a head of a Department or other major official, to see that the appointee is faithfully laboring for his master's political advancement. This evil influence, moreover, as already seen, is not confined within the mere limits of the administrative division of Government. Its unwholesome savor attaches to every member of the national legislature, and his first thought and most urgent duty is to secure as many appointments for his constituents as possible, knowing full well that he is thereby most sure to circumvent the efforts of rival aspirants for his position.

This consideration of political status—the fact that influence and not fitness is the key which unlocks the door to official place in the administrative department—is the general, fundamental defect of the system. Let the more important *results* of this defect be here submitted to a brief examination. Reference will be first had to the manner in which it affects the chief executive. Anticipating a little, in this connection, the tabulated statement farther on which contains the number and salaries of the officials of our civil service, let it be remembered that the President of the United States has the appointment or nomination of about twenty-eight hundred members of this administrative force. Let it also be remembered that these appointments are almost exclusively made in pursuance of the wishes of the members of Congress, and that these latter are between three and four hundred in number. Now, the statement is not an exaggeration, but a notorious, patent fact, that the consideration of the various applications for these places in the civil service consumes more of the President's time and attention than all his other duties combined. This consideration, moreover, is characterized and governed almost

solely by the fealty which the applicant is supposed to entertain for the President in person, and the amount of influence he may be relied upon to possess in the next approaching canvass. The evil result is therefore twofold. The material interests of the country *can* be almost immeasurably *advanced* by the constant attention of the chief executive thereto, although, possibly, they may remain in *statu quo* in the absence of such supervision. The President of the United States, in theory at least, and properly in practice, is not, like the queen of England, an ornamental appendage of Government. Justice to the demands of the office, outside of any connection with the civil service, requires all the time and application which the most brilliant intellect and greatest executive ability can bring to the position. It should be robbed of such attention of its incumbent only to the extent of insuring him needed rest and recreation; and the man who accepts the trust and enters upon its duties with any other intention grossly violates the confidence of the American people. Our system of civil service, however, places an absolute inhibition upon such a course on the part of the executive. We say absolute, for no man has yet been found of sufficient stability, strength of purpose and honest independence since the day of John Quincy Adams to emancipate himself from the slavery of our present system, and thereby prejudice the chances of his re-election. It is to be very gravely doubted whether such an individual is in existence. It may therefore be safely asserted that the present system consumes two-thirds of the President's time and attention which are imperatively demanded by the legitimate requirements of his official place. How much the interests of the country suffer by such a diversion of executive care it is impossible to say, but the statement that such inattention is not immensely prejudicial thereto is an hyperbole of the most ridiculous character possible.

The second evil result of this general defect upon the chief executive is seen in the fact that it completely compromises the independence and dignity of that official, and puts the President of the United States, in all his thoughts, policy and motives, upon an equal level with a collector of internal revenue. Extended remark in this direction is wholly unnecessary. It is sufficient to say that the fact is a disgrace to our national politics and an unblushing slander upon republican institutions in general.

Attention may be now directed to the result of this fundamental defect in the system upon members of Congress and their official duties. In this particular, however, very little need be said. A general application in this connection of the preceding remarks upon the prejudicial effect of this evil in its bearings upon the official status and legitimate requirements of the chief executive renders extended comment entirely unnecessary. As the position of the national legislators in respect to our civil service, relatively speaking, is precisely identical with that of the President, a train of similar evils flows from their connection with the scheme. For reasons already noticed, a very great if not a major portion of their time and attention is devoted to what, in Washington, is technically termed "Department business"—that is, begging places in the civil service for constituents who are ready to cast a ballot in the succeeding canvass for a "new candidate" in case a deaf ear is turned to their ceaseless importunity. The consequence here, as in the case of the President, consists in an almost culpable neglect of the legitimate requirements of official trust, and a most humiliating compromise of the dignity, independence and self-respect of the several members, together, by reason of the disgusting spectacle, with a partial and in many instances total exclusion of the sober-thinking and intelligent masses of our population from all participation in our national politics. This last, indeed, is one of

the most lamentable results of the system, as the country is thereby deprived of the services of those most competent to secure its material advancement and give character and prestige to our Government in its relations with foreign powers.

In respect to the injurious result of the working of this system upon the members of the service, the same may be adequately stated in a single remark. The sole end to which their efforts are directed is the advancement of the personal interests of the appointing power, and not the proper discharge of the duties incumbent upon their offices. The details incident to this general truth will sufficiently appear in the consideration of the manner in which this system taints and vulgarizes not only our national but all of our local and State elections.

The topic suggested by the next preceding remark will now engage attention, and it is one which gives shameful and indisputable evidence of the worst consequences of the present system. The proposition has not been intimated, nor in this or any other connection will it be maintained, that all or even a majority of our electors are actuated by purely selfish motives in the choice of our administrative and representative government. Such an assertion would be a grave departure from the truth. To their honor be it said, a goodly portion, at least, of the masses of the American people exercise the privilege of the elective franchise with a view of elevating their most capable and intelligent fellow-citizens to the public places of official trust. Humiliating, however, as the fact may seem, the same cannot be alleged in reference to the *leaders* of the various political organizations. Here, as everywhere, there are of course exceptions to the general rule, but a very large, and probably a major, portion of what are termed party managers base their entire action upon their own prospects of success in the coming election. Their chances of indi-

vidual, official gain measure alike their honesty, truthfulness and purity of purpose throughout the entire canvass.

A full examination of all the details of this branch of the general subject is inconsistent with the limits of the present chapter, but even a restricted comment will suffice to prove that a continuous and indissoluble chain of self-interest connects the election of the President of the United States with the choice of a leader of a village caucus, and that the means appropriated for the attainment of these respective ends are such as any respectable private citizen would not for a moment entertain in the prosecution of ordinary business pursuits. Comparatively speaking, indeed, the ruling power of these elections is found in the fact that "to the victor belong the spoils of the enemy." Look, for a moment, at the manner in which the delegates to a national convention for the nomination of a President are chosen, and the requisites which are demanded in an occupant of such a position. In a general statement like the present the inclusion of *specific* particulars is of course impossible (the States having different methods of action in this respect), but it is sufficiently exact to say that these delegates are chosen at State or local conventions called for this object alone or for this and other purposes combined. The members of these State or local conventions, moreover, are also chosen by the means of the more local "primary" meeting or "caucus;" and these last, using the technical political term, are invariably "packed" and managed, to a greater or less extent, by civil service officials of the United States within the localities. It will be remembered that these officials receive their appointment by reason of their fitness for this peculiar service. They are, without exception, the political leaders of their respective localities, and their influence is wellnigh insurmountable. It cannot well be otherwise. The principal duty of these local civil service officials throughout the year, and one which must

not be neglected in any event, is to marshal the necessary forces for the "manipulation" of these local primaries. And manipulated they are. A promise of a share in the "spoils," and a *judicious* distribution of funds obtained both by subscription and political assessments (which last will receive fuller notice in a separate connection), result in the return of a local delegation to the State convention pledged to support candidates for the presidential one who will "*do honor* to the party and maintain the supremacy of republican institutions in general." This last is understood to mean to vote for men selected by the more prominent members of the civil service who shall appear upon the scene of action.

Passing from the organization and work of these primary meetings, attention will be for a moment directed to the labor of the State conventions. The formation and composition of the latter have sufficiently appeared in the preceding remarks. The civil service element, suffice it to say, by reason of the action of the primaries, usually has a majority both in point of influence and numbers, and proceedings precisely similar to those of the local caucus characterize the deliberations throughout. The necessary delegates having been chosen, they must not only be "*pledged*" but "*instructed*" to support such and such parties for presidential electors. In many instances, even, their instructions are absolute, and discretionary action is strictly prohibited.

It is unnecessary to pursue this narration farther. The preliminary proceedings above described reach an appropriate culmination at the presidential convention, which by no means escapes the manipulation peculiar to the primaries that precede it. Reference, therefore, will now be had to the bearings of our present system upon the elections of the several States.

A condition of things incident to this system is here reached which it is impossible to censure in terms too

severe. It may be safely said that there is not a State in the Union which escapes the interference of Federal officials in the election of both its representative and administrative government. This is due principally to the fact that the United States Senators are chosen by the legislatures of the several States; and as these officials constitute the more important portion of the advisory board upon whose recommendation appointments are made to our civil service, it is of the utmost importance to the ruling party that the composition of these bodies shall be of a character in perfect harmony with the organization which directs the General Government. In view of this fact the nominating primaries and elections by which these State officials receive their appointment are largely influenced, and in many instances entirely controlled, by members of our civil service, as in the case of the national elections above noted. The choice of members of the State legislatures is the matter in which, as already indicated, this Federal interference is most largely interposed. It is not, however, with the election of such officials that this interference ceases. The fact is as notorious as it is *shameful* that the organization of these bodies, the choice of their presiding officers, the appointment of their committees, and every matter of internal regulation, indeed, however trivial its import, is subjected to this unwarranted manipulation of the agents of the General Government. There is no exaggeration in the statement last above made. It is patent to every intelligent observer of the State of New York that the organization of its legislature of 1872 was absolutely determined by the presence of no less than three hundred members of the civil service at Albany, acting, humiliating as the record may appear, under the immediate and combined supervision of one of the national legislators from that State, and an ex-collector of customs whom public opinion had forced to resign on account of alleged

irregular and disgraceful practices, which charges were not at the time, and never have been, disproved. The motive-power, let it be remembered, which induces this unwholesome conduct is a prospect of a position in the civil service of the nation.

Strictly germane to this general sub-subject is the matter of political assessments. They constitute, indeed, one of the most powerful levers by which the irregular measures of the civil service scheme are carried to a successful consummation. It is wholly unnecessary to indulge in a specific statement of details in this particular. The system is not a secret, but an open and defiant institution of itself, and the Federal servants are annually taxed in a sum equal in amount to from two to ten per cent. of their yearly income for purposes already described. The matter is here alluded to, for the sake of completeness, as one of the glaring defects of the present system. It will again receive attention when the essentials of a needed reform shall engage our consideration.

To conclude this brief examination of the defects of this system, a slight allusion will be made to the enervating effect it has upon individual character, the consequent attendant prejudice to the service, and the propriety of a healthy *esprit de corps* in political organizations.

In reference to the first, relatively speaking, there is not a position in which an individual can be placed which is so derogatory to every sense of manhood, so prejudicial to every feeling of personal responsibility, so destructive to every sentiment of honest independence, as a place in the civil service of the United States. The above is of course impliedly qualified by the hypothesis that the members maintain an undoubted spirit of party fealty. Upon this supposition an escape from the total demolition of the attributes of private character above mentioned is wellnigh impossible. The system, indeed, is a slavery of the most

contemptible sort—namely, that of honest thought and individual opinion. The assertion of the right to differ even, although such difference may not be declared, with the leaders of the party upon any matter of political concern, means an expulsion from the service without any other cause or pretext whatever. There are honorable exceptions, of course, but in view of this fact, this utter subservience of thought and action which is demanded from its members, the service attracts to the performance of its duties men of a mere time-serving spirit, parties who are willing to sacrifice their political principles, if necessary, for the promotion of party weal. It cannot be otherwise. Intelligent citizens, generally speaking, have too high a regard for the right of mental liberty to offer it as a commodity in exchange for the means of an ordinary subsistence. The consequence is, that the system not only militates against the stability of private character, but its defects recoil upon the interests of the nation which the service is intended to promote, by reason of the reputation of the parties who are alone willing to assume the discharge of its duties. The foregoing receives abundant corroboration in the admitted fact that one-fourth of the public revenues is squandered in the process of collection.

In no respect whatever, in the prior consideration of this subject, has an intendment been made to criticise private individuals or the separate, several members of our civil service. The general statements hereinbefore declared are, all of them, of course, subject to frequent and important exceptions. There are very many instances where both important and unimportant positions in this branch of the Government are not only occupied but adorned by men of sterling integrity, practical acquirements and unquestionable ability. Wherever such exceptions occur, however, they are wholly due to the fact that their political sentiments are in actual and voluntary instead of forced accord

with those of the party which directs the General Government.

This discussion must not be construed, moreover, into a declaration against party organization and the fostering of party spirit in the management of political affairs. Such organization and such an *esprit de corps* are absolutely indispensable, both for the ennoblement of politics and the welfare of the nation. There are two bases, however, to which party fealty and organism owe their origin. One is essentially sound and wholesome—the other is intrinsically defective and corrupt. One is unqualifiedly right—the other is absolutely wrong. The first is the maintenance and promotion of a *principle*—the second is the advancement of *individual gain*. That the former shall exist in party limits to the total exclusion of the latter is one of the problems which republican institutions are expected to solve. That this end is being removed, instead of approximated, by our present system of civil service, is what the foregoing remarks have essayed to maintain, and not that party spirit and organism are enemies of the public weal. Abstractly, they are a blessing—relatively, they *may* be a curse.

An approximate statement will now be made of the number of officials engaged in the civil service, and their aggregate salaries, when the requirements of a needed reform in this department will engage attention :

State.

No.	Service.	Compensation.
5	Executive Attachés.....	\$13,800.00
1	Secretary of State.....	8,000.00
2	Assistant Secretaries of State.....	7,000.00
46	Attachés of State Department.....	59,520.00
35	Foreign Ministers	331,750.00
310	Consuls and Consular Agents	400,000.00
52	Ministerial and Consular Attachés.....	84,825.00

No.	Service.	Compensation.
18	Officials of Territories (Governors, etc.)....	40,000.00
225	Attachés of Senate and House	355,144.40
694	Total	\$1,300,039.40

Mail.

1	Postmaster-General.....	\$8,000.00
3	Assistant Postmasters-General.....	10,500.00
31,000	Postmasters.....	6,000,000.00
6,292	Miscellaneous officials.....	5,500,000.00
37,296	Total.....	\$11,518,500.00

Interior.

1	Secretary of the Interior	\$8,000.00
1	Assistant Secretary.....	3,500.00
1650	Miscellaneous officials.....	2,000,000.00
1652	Total	\$2,011,500.00

Military.

1	Secretary of War	\$8,000.00
350	Attachés of Department.....	450,000.00
351	Total.....	\$458,000.00

Naval.

1	Secretary of the Navy.....	\$8,000.00
89	Attachés of Department.....	120,000.00
90	Total	\$128,000.00

Judicial.

1	Attorney-General.....	\$8,000.00
1	Solicitor-General.....	7,500.00
3	Assistant Attorneys-General	5,000.00
1	Solicitor of Internal Revenue.....	5,000.00
1	Naval Solicitor.....	3,500.00
1	Solicitor of the Treasury.....	5,000.00
1	Assistant Solicitor of the Treasury.....	3,000.00
34	Attachés of Department of Justice.....	46,570.00
1	Chief Justice of United States Supreme Court	8,500.00

No.	Service.	Compensation.
8	Associate Justices	\$64,000.00
9	Circuit Court Judges	54,000.00
52	District " "	189,500.00
1	Reporter of United States Supreme Court....	2,500.00
1	Marshal " " " "	3,500.00
1	Chief-Justice Supreme Court of Dist. Columbia	4,500.00
4	Associate Judges.....	16,000.00
5	Judges of United States Court of Claims.....	20,000.00
4	Attachés of " " " "	7,340.00
27	Judges of Territorial Courts.....	81,000.00
63	United States District Attorneys	19,150.00
56	" " Marshals	11,700.00
275	Total.....	\$575,260.00

Treasury.

1	Secretary of Treasury.....	\$8,000.00
2	Assistant Secretaries	7,000.00
2	Comptrollers.....	8,000.00
1	Commissioner of Customs.....	3,000.00
6	Auditors.....	18,000.00
1	Treasurer.....	6,500.00
1	Assistant Treasurer	2,800.00
2	Cashiers.....	5,300.00
2	Registers of Treasury.....	5,000.00
2	Comptrollers of Currency.....	7,500.00
4	Commissioners of Internal Revenue.....	15,500.00
2300	Attachés of Treasury Department proper..	2,760,000.00
100	Attachés of Coast Survey.....	120,000.00
650	Attachés of Lighthouses.....	585,000.00
140	Assessors of Internal Revenue.....	350,000.00
241	Collectors of Internal Revenue.....	723,000.00
157	Local Treasury officials.....	251,200.00
48	United States Depositaries.....	72,000.00
50	United States Mail officials.....	100,000.00
198	Port Appraisers of Merchandise & Attachés	237,600.00
3500	Customs officials.....	6,500,000.00
300	Miscellaneous	450,000.00
7708	Total	\$12,235,400.00

Recapitulation.

Service.	Number of Officials.	Compensation.
State.....	694.....	\$1,300,039.40
Mail	37,296.....	11,518,500.00
Interior.....	1,652.....	2,011,500.00
Military.....	351.....	458,000.00
Naval.....	90.....	128,000.00
Judicial.	275.....	575,260.00
Treasury	7,708.....	12,235,400.00
Grand Total.....	48,066.....	\$28,226,699.40

The foregoing statement, as intimated in the outset, does not assume to be strictly accurate. Such a statement, for various reasons, would be quite impossible. The service is constantly varying in every particular above alluded to, and the means of information are not only more or less uncertain, but somewhat difficult of access. The preceding details, to some extent, have been reached by estimate, but such estimates, confined as they are within comparatively narrow limits, are based upon data furnished the author by the several Departments of the General Government, and the table may be relied on as approximately correct. The remark is ventured with the utmost confidence that its errors are not those of exaggeration. At every step of the tedious investigation by which this statement was secured the utmost care was taken to confine the enumeration and salaries of officials within the maximum limit, and whenever doubt or uncertainty arose the conclusion was that of a minimum character. The table, moreover, only includes such members of the service as secure their positions by appointment, and does not embrace those who are less directly in Government employ. For instance, there are eight thousand mail contractors, and many sub-officials of the postal service, who are employed by regular appointees of the Department, that do not appear in the foregoing table. The same is true of all the other branches of the service, such

as deputy collectors and mere ministerial assistants to local officials. The author has made an estimate, upon Departmental data, of the number actually engaged in the civil service of the Government, both directly by appointment and otherwise, and the conclusion arrived at warrants the statement that fully one hundred thousand people are so employed. The Post-office Department alone was of the opinion that its attachés would equal the number above given, but the author's estimate, guided at all times by minimum calculations, resulted in the conclusion above stated.

It will be noticed that the table does not assume to give a detailed statement of either the manner of appointment or the different grades of the members of the service. Such a course would have both exceeded the limits and prejudiced the relevancy of this discussion. In reference to the first, the President appoints all the more prominent officials separately named under the different headings of the table, subject to the confirmation of the Senate. These include cabinet and foreign ministers, consuls and consular agents, heads of bureaus, collectors of customs, major internal revenue officials, postmasters whose salaries exceed one thousand dollars per annum, land commissioners, superintendents of Indian affairs, Indian agents, etc. etc. These presidential appointments are about two thousand eight hundred in number, and the same consist of about twelve hundred postmasters, two hundred and twenty-five officials of the three classes last above named, three hundred and fifty members of the diplomatic service, two hundred and seventy-five members of the judiciary, and the remainder mostly relate to the business connected with the Department of Finance. The other members of the service are appointed by heads of Departments or major local officials, subject, in most cases, to the approval of some official of a higher rank, such as the chief of one particular

Department, bureau or branch. For instance, the attachés of the customs service are appointed by the collectors of the various ports, subject to the confirmation of the Secretary of the Treasury. So far as the grades of these officials are concerned, it is only in the Mail and Interior services that the same are very much condensed by the enumeration in the table. The first includes clerks in post-offices, letter-carriers, route-agents, railway-office clerks, mail-route messengers, and local and special agents, while the second embraces the attachés of the Pension, Patent, Indian, Agricultural and Educational bureaus.

The way is now opened for the discussion of a reform in the present system. This branch of the general topic has been made the subject of extended comment by various journals and periodicals, and although necessarily, for the most part, of a somewhat vague and desultory character, many valuable suggestions have thereby been brought to the attention of the public mind. Up to the present time, however (the spring of 1872), the assertion is ventured that a feasible, *practical* system of civil service, *in extenso*, has not resulted from the labors of those who have given the matter special thought and consideration. The author's treatment of the subject may eventuate in suggestions equally if not more impracticable than those above mentioned. The problem is not easy of solution, and the annexed remarks are offered, not as the expression of means which would put our civil service upon an *entirely* healthy footing, but as those which would closely approximate to that end. Perfection is the result of experience and not of theory, and here, as in every instance of a similar nature, such an end must be reached by the double process of analysis and synthesis, and not by either alone. In other words, a system must be built upon *existing facts*, instead of *speculative* or *hypothetical propositions*. Constitutions, charters, governments, and all rules of action

which stand the test of time, are *learned* and not *devised*. A reform in our system of civil service, if it is to live, must be based upon the idea of *removing the past causes which have created its present evils, and not be predicated upon the basis of mere invention*. The first is indeed *reform*—the latter is merely *change*. These prefatory statements will most rigorously govern the following discussion.

The evils of the present system are due entirely to the motives which direct its management. There are two methods of attempting their correction. One is by arbitrary, prohibitory law—the other by removing the cause which generates the motive—by changing the springs of action which control the management of the service. The first is *never*, the latter *always, entirely* effective. This general principle has received repeated expression in prior discussions in this work, but its importance gives abundant excuse for its reiteration whenever its application is deemed advisable. In pursuance of this principle, a series of propositions will now be stated, which, if put in practice, would greatly reform our present system, if not entirely cure it of its many defects. These propositions, which will be discussed sufficiently at length hereafter, are—

1. One term for the President of the United States ;
2. Forbid Congressional recommendation for office ;
3. Make heads of Departments and other appointing agencies ineligible for office under the General Government during the next succeeding Administration ;
4. Elect such local officials as postmasters, collectors of customs and assessors and collectors of internal revenue ;
5. Forbid members of the service from holding any other office, under either a State or the United States, during the rule of the Administration by which they are appointed, and also from engaging in State politics further than exercising the right of suffrage ;

6. Forbid political assessments upon members of the service ;

7. Establish a tenure of office for members of the service, to hold, upon condition of good behavior, till removal by the next Administration ;

8. Pay larger salaries ;

9. Apportion all offices, except cabinet ministers, foreign ministers, Territorial and scientific officials, members of the judiciary, heads of bureaus and branches, and such personal assistants as private secretaries, among the several States ;

10. Fill all offices, except those mentioned in the fourth and ninth paragraphs, by drawing names, upon the basis of an apportionment as above stated, from the inhabitants of the several States, counties, cities, towns and villages, irrespective of party, upon a principle similar to that by which trial-juries are selected, and from such list let the appointing agency make its nomination ;

11. Exclude all newspaper attachés from positions in the service ;

12. Establish a Government journal or periodical for the publication of the laws.

Comment will now be offered on each of these propositions, with the attempt to show not only that, *taken together*, they conform to the general principle of successful reform stated in the outset, but also that they strike at the root of all the major evils of the present system, and tend to the establishment of a civil service institution for the General Government which would be at the same time healthy, satisfactory, adequate and substantial. Before attention is separately directed to the propositions above stated a little general remark is pertinent as to the feasibility of the entire scheme. It will be readily noticed that the same cannot be legally effected by the interposition of mere statute law. For the attainment of this end a change

in the national Constitution would be imperative. The change, however, would not be difficult to secure, as it would operate to establish *equality of opportunity*, and would be, in every respect, in perfect consonance with the genius and spirit of our institutions. The precise limits of this change will be hereafter noticed ; the point is here alluded to for the purpose of disarming unnecessary and fruitless criticism. Of the several propositions in their respective order.

1. *One Term for the President of the United States.*

This is a principle which requires no discussion at the hands of the author to prove either its necessity or advantage. It draws to its consideration no charm of novelty, but its eminent desirability has waxed instead of waned under the almost ceaseless criticism which its maintenance has provoked. If the prejudicial effect of the present system upon the chief executive, and through him upon the politics and national prosperity of the nation, as stated in a prior portion of this chapter, is for a moment recalled, a little impartial reflection cannot possibly fail to show how complete an eradication of the evils there stated the adoption of this provision would secure. Humanity is, at best, imperfect, and the President of the United States cannot be reasonably supposed to form an exception to the general rule. With the possibility placed before him of occupying the administrative chair of the nation for a second term, history proves that much of his time and attention is devoted to the attainment of that end. The hope of such success, indeed, shapes the entire policy of his Government, and the record of every Administration since 1829, with the exception perhaps of Mr. Lincoln's, is impartially given in the statement that the civil service of the nation has been completely prostituted by the chief executive to

the purpose of re-election. The power which he wields in this direction, in the way of Governmental patronage, is almost inappreciable, for although he directly appoints only about three thousand members of the service, yet his immediate appointees select the remainder, and his influence is thus felt to the extreme outpost of the army of officials which makes up the entire force. Taking into consideration the amount of money obtained by political assessments of civil service officials, and the sum paid for salaries, the President's power for re-election is measured by the efforts of one hundred thousand sworn supporters and the annual distribution of one hundred millions of dollars. This power is *used, shamefully used*, and never so much so as at present.

The effect of making the President of the United States ineligible for a second term is self-apparent. His leading ambition in that event, instead of an aim to extend the term of his personal elevation, would be to so administer the affairs of the nation that, when the insignia of his office should be laid aside, no man could point to a blot upon his official record or give evidence of a mistake in his Administration. He would, in short, to use a homely but expressive phrase, *be put upon his honor*, and entirely beyond the reach of sinister motives or unscrupulous men. Congressmen might clamor, politicians might importune, and *friends even* might press their claims for a place in the civil service of the nation, but all alike would be powerless to mould the will or gain the favor of executive power. Aside from his meagre salary, reputation would be the President's sole emolument, and his position (purely selfish, but emphatically wholesome) would be, "Gentlemen, stand aloof! I hold the highest honor in the gift of the world, and that for the only time. My official career is drawing to a close, and no man shall be appointed to a place of public duty or trust unless he can answer the demands of

the people who elected me, reflect honor upon my Administration and credit upon myself."

There is one objection which will be made to this proposition, which, if tenable, would attach to more of the remaining ones above stated. It will be referred to now in a general sense, once for all, although circumstances will require its more special attention hereafter. It is this: The plea is made that a man who has served in an official position for a single term is better fitted for the discharge of its duties than one who is inexperienced, and therefore a re-election should not be made impossible. Applied to the legislative department of our Government, the point is partially pertinent, and is fully met by the constitutional provision which bars a change in the Senate at the same time beyond the limit of one-third of its members. This, moreover, is abundantly sufficient, and should not be extended to the lower branch of the national legislature. The American republic is one of progress, and is constantly developing new interests, which our history has proved are better served by changes in legislative representation than by continued adherence to the same officials of this particular description. This is not all. Intelligence is the only true title of nobility in the United States. Its possession is the greatest desideratum of every well-balanced American mind, and the extent of intellectual attainments is augmented with the passage of every decade and doubled with every successive generation. We know no impossibility, and *present* servants of the nation are, with us, *never the only ones who can adequately fill the position*. Buffon has with partial truth remarked, that "genius is only a protracted patience." However defective the philosopher's aphorism as an unqualified rule, certain it is that genius, whatever it is, is greatly enhanced by education, and to this end American institutions are constantly tending. Whenever occasion requires there may

always be found, in the educated ranks of the American people, Presidents, Senators and Representatives equally as able, efficient and honest as the then present incumbents, and with our present system of civil service, by means of which all three are the component parts of a political bargain, a good deal more so. As applied to the chief executive, moreover, the argument is entirely overborne by the advantages, already expressed, to be derived from a one-term principle. The ground traversed will not be reviewed. The prejudice, if any, sustained by the public service during the brief interval in which a newly-elected President is grasping the reins of government is as nothing compared with that which results from the abuses already described under our present system. Beside all this, there is an argument of a purely abstract character. Rotation in office is one of the fundamental elements of republican governments. It is one of the boundary-lines, indeed, between republican and monarchical rule. An argument for a continued fixity of official tenure is an argument for a change from the former to the latter—a plea for power in the hands of a few to the exclusion of the many, for oligarchy and aristocracy instead of self-government and equality. It cannot have force this side of the Atlantic. “The sea of liberty is always stormy,” it is true, but it is an element of agitation which always purifies and never corrupts—an exponent of healthy life instead of withering decay.

2. Forbid Congressional Recommendation for Office.

Upon this isolated point very little need be said. The proposition does not have its origin here, but is due to Lyman Trumbull. It is perfectly germane to the one-term principle just dismissed, and with it goes hand in hand. In this connection, as in the next preceding one, a detailed recurrence will not be had to the evils of the present system as connected with our national legislators. They are well

remembered. They may be all summed up in the single statement that the first and best efforts of Senators and Representatives are given to the procurement of places in the civil service for their constituents in order to secure a re-election, and that the real interests of the country are thereby neglected. The effect of the proposed regulation is capable of a definition equally brief with the evils of the opposite rule now in force. The members of Congress would be placed upon an independent and immovable footing, and would be judged of solely by their merit, instead of by their services in begging offices of the President and several Departments. Upon their fidelity, ability and actual fitness for their high positions would alone hinge their prospects of re-election, and they would go before the people and the country upon no collateral or inferior issues. There would be no official debit-and-credit account between them and the electors, and the rivals who would essay to succeed them would have no bribe of "spoils" to hold out for votes to accomplish their purpose. A single objection is yet to be raised to the proposition, but a *quasi* one will be anticipated before the same is dismissed.

The question may be asked, Why should not members of Congress be made ineligible for a second term as well as the chief executive? The cases are not at all parallel. They are indeed hardly similar. *Members of Congress can never actually appoint—the President of the United States always can.* The above fact furnishes a key to the entire position. The President appoints, Congressmen recommend. The former made ineligible for re-election, the motive for bad appointments is destroyed. The latter forbidden to recommend, improper means for the continuance of their official status are placed beyond their reach. *The evil is removed. The scheme goes to the extent of existing facts.* Beyond that, as stated in the outset, this discussion does not tend.

3. *Make Heads of Departments and other Appointing Agencies Ineligible for Office under the General Government during the Next Succeeding Administration.*

The principle which underlies this proposition is precisely similar to that upon which a single term of office for the chief executive is demanded. The cases are not in every or even many respects parallel, but the same motives govern the action of one as the other. The President seeks a reelection to the same official position—the parties above named are looking for an advancement of their political status. As already seen, these last named hold the gift of twenty-five thousand offices in their hands. They hold this prerogative, however, with an express condition attached to the exercise thereof—namely, that they so use it as to secure the promotion of the personal aims of their chief. In any event his success is theirs, so far as the assurance of their immediate official tenure is concerned, for the next succeeding Administration. The power of these officials upon the politics of the nation is, in fact, twofold. Their appointments to office, while they tend to advance the interests of the chief executive, operate still more forcibly to promote their own, and the immense patronage of Government which it is their privilege to bestow is abundantly sufficient to secure for them almost any reasonable advancement to which they may aspire. The result is injurious in the extreme. With the exception, here and there, of an isolated instance, there is a constant bargaining of spoils and place between these officials and their constituents, the consideration of which is unremitting effort for the personal aggrandizement of the former, *for which labor, moreover, the General Government—that is, the people—pay the stipulated compensation.* A little reflection cannot but make it apparent that such a change as this would do away with much of the evil of the present system. This proposition, indeed, is in

two respects a cumulative remedy. Taken in connection with the first one above stated, it helps to remove the President from the influence of improper motives by taking from him powerful means of advancement; and within itself it operates not only to check these officials from giving aid to the chief executive, but also from securing their personal elevation. And this for the simple reason that, as they would be ineligible to official position under the General Government for the next succeeding four years, the sole benefit to be obtained from their office, aside from their petty salary, would be the safety of their good name and the enhancement of their individual honor.

Any difficulty which seemingly attaches to the working of this principle is entirely dispelled by the operation of the eighth and ninth propositions above stated. The first, properly adjusted, would overbear the reluctance to be banished from official power under the General Government for a period of four years, and the latter would render offence to any party or class absolutely impossible, save through the inherent meanness or moral turpitude of the ruling official.

A single word as to the period and character of official ineligibility prescribed by the proposition now under consideration. It will be noticed that the proscription does not attach to official place under the government of any State. That would seem both wholly unnecessary and manifestly unwarrantable. The remedy, in preventing improper elevation to office under the General Government, goes to the extent of the evil under examination, and beyond that this discussion has nothing to do. The period of such proscription, moreover, is sufficiently long to render wholly unavailable any effort of these officials while in office to further their own ends when such period shall have passed, and yet not so greatly extended as to exclude men of proper capacity and reputation from accepting appoint-

ments to such positions, provided the pecuniary emoluments are made reasonably adequate.

4. *Elect such Local Officials as Postmasters, Collectors of Customs and Assessors and Collectors of Internal Revenue.*

The principle which characterizes this proposition is two-fold—namely: it gives to the people the right of choosing such officials as are intrusted with the discharge of duties of a purely local character, and takes from the executive department of Government the distribution of a large amount of official patronage. It not only gives to the people what is manifestly an essential right—namely, that of choosing such persons as they see fit to administer the restricted internal affairs of their respective localities—but also takes from the national Administration some of the most powerful levers which have ever been applied to continue its ascendancy. The appointment of the members of the service above named by the executive department ever has—and in a great measure during the latter portion of the present Administration—been entirely governed by the supposed ability of the appointees to manipulate the machinery of local politics in the interest of the chief executive and his sworn adherents. This is especially true of the customs department. This discussion assumes to deal with principles alone, and not with individuals in any single particular (to such a course it cannot condescend), and the following citation of facts in support of the proposition now under consideration must be viewed strictly from such a standpoint. Reference is had to the abuse of the customs service by the present Administration at the ports of New York, Troy, New Orleans and those of Alabama. If our political history was entirely barren of other instances of maladministration in this direction, the course of our executive department since the commencement of the year

1871 has more than sufficed to render the change here advocated absolutely imperative. To say that the policy pursued has been merely unwise and injudicious would be simply an abuse of terms. It has been positively disgraceful, scandalous and defiantly illegal. The management of the customs business of the ports above named, to say nothing of similar proceedings in other States, since the period above named, furnishes one of the most revolting exhibitions of the prostitution of the public business and the squandering the people's money for the promotion of personal aims which this or any other country has ever witnessed. It is a pungent commentary upon the present system—an unanswerable argument to the theory that *influence* shall govern the appointments to our civil service—a striking illustration of the exchange of spoils for political labor—an open, unblushing example of the employment of adventurers by the executive department of the United States to further the personal interests of its chiefs; for which end the people have been taxed and the public revenues misapplied.

Extension of this particular argument is wholly unnecessary. The benefit to be derived from the change now proposed has been clearly foreshadowed by the consideration of the three prior propositions. They are integral and indissoluble parts of a system which has for its end the destruction of motives for improper conduct, the removal of both appointors and appointees from unwholesome influence, and the neutralization of personal ambition for future individual gain.

A single word is pertinent upon the subject of civil service elections in the abstract. They should be closely confined within the designated limits of this discussion; that is, they should only attach to the choice of officials who administer purely local interests, as distinguished from those with which the people of the collective States are con-

cerned. In not a single instance should they extend to either the choice of members of the judiciary or to the selection of officers who are to serve the country at large, such as foreign ministers, consuls general, etc. etc. The reason of this is evident and unimpeachable. The evils of an elective judiciary are too well and generally known to require recital in this connection, and the intimate relations of such officials as are above named with the executive department, from which they receive both general and special instructions, render it eminently fitting that their choice should rest with the President, while the ineligibility of the latter for a second term gives abundant warrant of wise and discreet appointments.

5. *Forbid Members of the Service from holding any other Office, under either a State or the United States, during the Rule of the Administration by which they were Appointed, and also from Engaging in State Politics further than Exercising the Right of Suffrage.*

The above principle, to what extent it is unnecessary to detail, is partially provided for by existing laws. Its object is sole, single and clearly apparent. It seeks to prevent the possibility of making civil service officials tools in the hands of the appointing agencies for the attainment of their personal ends. With the various provisions of ineligibility stated in the outset, this proposition is a cumulative remedy, and the seventh one renders the otherwise objectionable character of the *quasi* proscription entirely nugatory. It has, like some other features of the entire scheme, a constitutional aspect, which, in connection with the others, will receive a collective consideration farther on.

6. *Forbid Political Assessments.*

Upon this point also very little need be said. As to its justice, argument is quite unnecessary, and its policy the

slightest reflection will readily affirm. It is designed to place the members of the service upon an independent footing, bar the appointing agencies from securing illegal means for their future aggrandizement, and, with the provisions of ineligibility before mentioned, together with the tenure established by the seventh proposition of the scheme, would not run counter to a single interest or clash with any direct or collateral institution of the service.

7. *Establish a Tenure of Office for Members of the Service, to hold, upon Condition of Good Behavior, till Removal by the next Succeeding Administration.*

The object hereby sought is identical with that described in the next preceding paragraph, and is an essential feature of the entire scheme now under discussion. The conditions thereby imposed upon members of the service are, in some respects, somewhat exacting, and should be offset with an assurance of a well-defined permanence of official position. Its tendency, however, to place the officials upon such a footing, by removing them beyond the whim or caprice of the appointing agency, as will only require at their hands a faithful performance of their duties, is the cardinal point of the proposition. It requires neither discussion nor extended statement to establish its pertinence and desirability.

8. *Pay Larger Salaries.*

In repelling an attack made upon the system of awarding heavy compensation to the judges of the English courts, Lord Brougham gave utterance to the quaint but truthful expression, that "dear justice is very much to be preferred to cheap injustice." The declaration is a monument of economic wisdom, and is applicable to every department of every form of government. The scope of the aphorism of the English publicist may well, indeed, be so extended as to include every branch of the public service. The

idea that public economy consists in awarding the smallest possible compensation for the services required by Government is a grave mistake, and has and ever will result in irreparable injury to the national weal. It is, in short, the worst kind of extravagance. *There is not an office in the gift of the American people to-day which offers sufficient compensation to those who are capable of discharging its duties.* The honor which attaches to these positions is, of course, a sufficient inducement to men who have, either by ancestral labor or forethought, or their own wisdom or good-fortune, possessed themselves of moneyed advantages; *but all able men are not wealthy men: the greater portion of American talent, indeed, is associated with comparative poverty.* It has fallen heir to no landed or personal estates, like the aristocracy of the English realm or continental Europe, but through the mobility of republican institutions has hewn its way to genuine greatness—intelligence—and has had no time for the accumulation of wealth. To invite it to serve the public for less reward than it can realize from private business is not alone bad policy and insulting: it offers a premium upon ignorance. The working of the principle is clearly evidenced by historical facts. Honor is tempting, but wealth, to men of moderate means, is the most seductive of the two. *The first stands alone—the latter, under our present system of civil service, can command the former.* The consequence is, that the Government in isolated instances is ably served by able, wealthy men, but in the majority of cases is poorly, and too often dishonestly, served by men whose inferior talents render the acceptance of places in the public service an advantage instead of a sacrifice. It is a policy which any intelligent management of private interests would not for a moment contemplate. This assertion is pointedly illustrated by a somewhat recent action of the legislature of the State of Illinois. After the adoption of the new State constitution it became necessary

to have a thorough reorganization of the railroad policy of the State. A commission was decided upon for the work, and the State legislature, after a good deal of moralizing upon retrenchment and kindred topics, ordered the employment of three commissioners at the annual salary, each, of \$3500. The railroad corporations of the State also employed a "*commission*" to look after their interests in the proposed reorganization, and directed their agent to employ the best men who could be obtained for a several salary of \$25,000 per annum. It need not be very much doubted whether the State of Illinois or its railroad companies will advantage most by the new institution.

Let attention be directed for a moment to the salaries of our judicial officials, as seen in the table hereinbefore contained. They are absolutely contemptible in their littleness when the character of the required service is taken into consideration. The chief-justice of the Supreme Court of the United States receives an annual salary of \$8500. A police judge of the city of New York, whose business it is to hear cases involving petty crimes and misdemeanors, receives \$10,000 for his yearly stipend. Hundreds of private corporations throughout the country, moreover, pay equally large, and oftentimes greater, salaries for legal counsel and advice. The force of the remark is equally applicable to the compensation allowed the chief executive and members of Congress. In both departments the country is, in isolated instances, it is true, efficiently, honestly and brilliantly served, but all have had incumbents whom the people would have profited by paying them their legal dues for remaining in private life, and employing capable men to perform the duties of the office at five times the regular allowance.

These general remarks contain nearly everything which is specially involved in the particular point now under consideration. The proportion, however, is indispensable to

the general scheme herein submitted. There are elements of personal and political proscription therein contained which must be offset by inducements sufficient to neutralize the force of their restrictions. This end would be obtained by the payment of larger salaries than private vocations will afford, and, more desirable than all, would bring to the places of public trust men who would adorn the positions, honor the nation and actually diminish the expense of Government.

This particular proposition disarms all criticism which some discriminative mind may have ere this bestowed upon the general scheme. The plan was announced as one which would reform our civil service by acting upon the motives of men, and not by arbitrary command. Some features of this scheme, taken alone, are, as has been doubtless noticed, in the form of positive, unyielding law, but, associated with the remaining ones, they appeal to the personal interest and welfare of those which the Government service would invite to its ranks. This fundamental principle of the scheme is preserved inviolate by the proposition herewith dismissed.

9. *Apportion all offices, except Cabinet Ministers, Foreign Ministers, Territorial and Scientific Officials, Members of the Judiciary, Heads of Bureaus and Branches, and such Personal Assistants as Private Secretaries, among the several States.*

As to the general principle involved in this proposition, it aims to equalize the advantages resulting from the civil service among the several States of the Union. It would tend to make impossible any complaint of locality so often raised in the distribution of political emoluments and the choice of Representatives by the people at large. The proposed apportionment, moreover, is confined within such limits as not to prejudice the efficiency of the force in any

single particular. It will be noticed, by a little reflection (all the more prominent local officials having been chosen by election, in accordance with the proposition hereinbefore advanced), that by reason of the exceptions above noted this feature of the scheme attaches solely to officials of a purely *ministerial* character, as distinguished from those who are charged with the performance of *discretionary* duties. While it is eminently fitting, and absolutely imperative even, that the appointing agency should be allowed the utmost latitude in the selection of officials of the latter class, the choice of the former rests upon an entirely different foundation. The interests of the public demand that the comparatively petty claim of locality shall have no force in the appointment of servants who are called upon to exercise discretionary powers. Parties fit for such positions are more frequently congregated within restricted territorial limits than scattered over different sections of the country. In the case of ministerial officials, however, no such fact appears. Such inhabitants of every State or locality as are contemplated by the proposition next to be discussed are, without exception, fully competent for the discharge of the official duties pertinent to the present feature of the scheme. The proposition not only equalizes opportunity, in a relative degree, among the people at large, but operates, in connection with its associates, to prevent the negotiation of official place for political service and influence. The necessity and propriety of leaving the choice of such personal assistants as private secretaries wholly in the hands of the appointing power requires, of course, no argument whatever.

10. *Fill all Offices, except those mentioned in the Fourth and Ninth Propositions, by Drawing Names, upon the Basis of the Apportionment as stated above, from the Inhabitants of the several States, Counties,*

Cities, Towns and Villages, Irrespective of Party, upon a Principle similar to that by which Trial-Juries are selected, and from such List let the Appointing Agency make its Nomination.

This proposal, as above stated, requires a little amplification.

First, as to the offices embraced by this proposition. As to this point, it will be noticed that the same attaches to the merely ministerial officials of the service as described in the next preceding paragraph.

Second, as to the basis upon which the proposed drawing should be made. In the examination of a proposed reform system a discussion of a bill by which such reform shall be secured is neither relevant nor practicable. Suffice it to say, in this connection, that the apportionment above alluded to is predicated upon the idea of giving to the several States a number of offices in the civil service proportionate to their representative population; that is, the number of voters in each State shall decide the number of offices to be awarded. This number having been obtained by an apportionment of Congress, the drawing is to be made by the several States from their inhabitants. This drawing would of course be necessarily preceded by a second apportionment by the States among their several cities, towns and villages, upon the same basis as the Congressional apportionment above mentioned.

Third, as to the particular element of population from which the drawing should be made. This is a point of considerable nicety if the fundamental element of the general scheme is to be preserved inviolate. The paramount aim of this scheme, as frequently asserted, is to place every ramification of our civil service beyond the reach of *influence*. It will be remembered that the proposition now under discussion advocates a drawing of officials upon a

plan “*similar* to that by which trial-juries are selected.” It does not say upon the *same* plan. Trial-juries are usually or quite generally drawn from names of individuals selected by designated authority for the purpose on the score of *intelligence*. This element of intelligence *must* be preserved in the proposed drawing of civil service officials. It *must not*, however, be left to the direction or decision of a board of apportionment or other State authority. *The delegated authority of a State, under this scheme, must not be empowered to say what element of the State population is sufficiently intelligent, and what is not.* Such a rule, although to some extent objectionable (to what extent is irrelevant), is, in a certain sense, well enough for the selection of trial-juries. The duties of such officials are *undesirable*, and consequently there is no influence brought to bear to secure the position. Under the proposed system of civil service, however, the condition of things would be entirely different. The scheme contemplates the payment of heavy salaries, and therefore renders the service attractive. To leave a board of apportionment or other State authority to decide upon the persons of sufficient intelligence to have their names enrolled for a drawing would leave an open door for the perpetration, upon a smaller scale, of the same abuses which attach to the present system. It would be a *reduction*, but not an *abrogation*, of existing evils. The authority vested with such power would be subjected to both the importunities and misrepresentations of applicants, as well as the seductive powers of *influence*. It would, in short, be polluted by bribes.

There is but one way out of this difficulty, and that is rigid, sensible and well defined. *Let the names enrolled for a drawing be those of voters who can furnish the constituted authorities a diploma of some reputable academic or other higher institution.* With this requirement make no compromise whatever. Refuse without exception all other evi-

dences of intelligence, such as certificates of private individuals, and make the rule unqualified and irrefragable. *Is this proscription?* To a certain extent, but, all things considered, a very limited one, and that of a most wholesome and beneficial tendency. The grade of education required is by no means high, and entirely available by the masses. The Government by this scheme offers a compensation for the service it requires greatly in excess of what private parties can or will allow. It is entitled to the most absolute warrant of capacity in return. The basis of this drawing, moreover, would be a healthful and powerful incentive to the education of the masses. *It would, in fact, in a passive, silent manner, accomplish for the United States what the educational laws of Germany do for that country—namely, educate the entire population.*

Fourth, as to the number of names to be drawn. Of this little need be said. Make the number double or treble that of the offices required to be filled, and from this number let the appointing agency make its choice. The ineligibility of the latter for a second term of office gives ample warrant that this very restricted discretion would not be abused.

Several of the more prominent features of a bill requisite to effect such changes suggested by the entire scheme, as could be secured otherwise than by a constitutional amendment, will be briefly stated in another connection. The importance of the present proposition required an anticipation of this statement to the extent of giving the points above defined.

The *meaning* of this proposition having been somewhat explained, it will now receive a more general consideration. It is, in almost every particular, mainly supplemental of the one which precedes it. Taken together, the chief end sought by their institution is the equalization of opportunity. They also tend in the general direction of the entire

scheme—that is, the separation of the service from influence of every sort, whether individual or local. The equalization of opportunity hereby sought is imperatively demanded in order that the politics of the country may be saved from total corruption. The superior advantages which are obtained by a select class under our present system by means which are always unmanly and disgraceful, not to say dishonest, occasion more disturbance to the material prosperity of the country than almost all other causes combined. The remedy advanced by these features of the general scheme seems not only adequate, but entirely practicable. It provides for an apportionment and drawing, as will be remembered, *irrespective of party*. This point will of course meet the objection of the *technical politician*, as will every plan other than that of an unadulterated spoil-system like the present. It will, however, commend itself to reflecting and impartial intelligence. Its merit is enclosed within a very small compass, but the force of it is almost inappreciable. *It abolishes the present slavery of political opinion*. The present system generates precisely such a slavery, and one which will outlive every force marshaled for its destruction save that which seeks to destroy the motive that perpetuates it. Office under the General Government at present crystallizes itself into the mandate, “Imbibe the political creed of the Administration, and follow wherever it leads.” This, so far as discretionary officials are concerned, is entirely proper—yes, absolutely necessary. The Government *directors* must, of necessity, harmonize in their opinion of public matters in general, however much they may vary upon minor and unimportant details. With its ministerial service, however, this principle, as a matter of policy, has nothing to do. It is wholly irrelevant. A Democrat would poorly represent the interests of the country as a minister at the court of St. James under a Republican Administration, it is true, but he could

post the Government's ledgers precisely as well as though of an opposite political belief.

The beneficial result which would flow from this particular feature cannot be over-estimated. The thirst for office under our present policy bribes the political opinion and conduct of a good percentage of the voters of the entire country. The influence in this direction is most pernicious and prejudicial, and the precedents established are still more lamentable. It is of the utmost importance to republican institutions, it is indeed the very soul of their existence, that the *thought* of their people shall be wholly untrammelled. In the absence of such perfect freedom of opinion reforms of abuses are entirely impossible until they sink, indeed, by the weight of their own iniquity. Reforms, sorely-needed ones, in American politics, to-day, are wellnigh hopeless by virtue of precisely this state of facts. Independent thought and action is asserted in only isolated instances, *for the simple reason that the loss of present or prospective Government patronage is feared as the consequence.* But let the opposing political parties of the country understand that every man, whatever his political belief, with the evidence of intelligence already stated, can have his name enrolled for a drawing which will without prejudice place him upon an equal footing with all other aspirants as to his chances of securing an appointment to office, and the political acts and utterances of the entire masses would be in accordance with their real convictions, and in every way honest and sincere. Abuses would then be reformed as soon as discovered. They would gain existence only to suffer immediate death. It could not be otherwise. The majority of mankind are defenders of probity and good morals, followers of right instead of wrong, and with the assurance that the maintenance of the former could in no way subject them to personal hazard, they would ever compel its ascendancy.

A watchful reader may say in this connection, Suppose a drawing as above proposed produces the names of the opposing parties in about an equal number, would not the appointing agency first exhaust the list of names of those who indorsed the politics of the Administration? We think not. The ineligibility of these appointors for a second term of office puts them under bonds for good behavior, and they would have nothing to gain, but much to lose, by such a course. If the law allowed political opponents to enroll themselves for appointment, it would plainly contemplate *that they should be appointed*, and a refusal so to appoint would be a breach of upright, manly action, and a constructive defiance of law which could not result to the advantage of the appointing agency. The Speaker of the House of Representatives selects the standing committees proportionately from all the political elements of that body. The cases are precisely parallel, but the seeming uncertainty, if such there be, could be removed by a provision directing that the appointing agency shall make its selections proportionately from the names of all political parties produced by the drawing.

11 and 12. *Exclude all Newspaper Attachés from Positions in the Service.—Establish a Government Journal or Periodical for the Publication of Laws.*

These two propositions may be appropriately considered together. They have precisely the same end in view, and remarks which are relevant to the one are equally pertinent to the other. Their object is to prevent the subsidy of the press by the party in power, and thus destroy its efficiency and usefulness. Comment in this connection will be restricted within very narrow limits. The opposite course is quite unnecessary. The fact is as notorious as it is lamentable that the press of the country is almost immeasurably influenced in its policy by its dealings with the Administra-

tion. The newspaper-men of the country to-day who have appointments in the civil service, many of them mere sinecures, *are numbered by thousands*, who are diligent in season and out of season, unhesitatingly and unreasoningly defending the Administration in acts which, to say the least, are closely akin to lawlessness. They are absolutely pledged, indeed, to stand by the Administration, right or wrong. Another class are equally obsequious and self-stultifying, with the *hope* that their insincerity may be rewarded by official preferment. The evil of this condition of things is threefold. It gives the Administration the use of an unwarranted power, corrupts the press *and deceives the public*. The last-mentioned point is the greatest evil of the three. A goodly portion of the voters of the country depend upon "their paper" for the whole of their information upon public affairs. The demands of labor and business bar them from going outside of these disseminators of intelligence in quest of facts. Habit is powerful, and none more so than the one which people have of accepting the statements of their journal as unqualifiedly and invariably correct. *Newspaper editorials, indeed, control the individual opinions of two-thirds of the voters of the entire country.* In view of these facts, can there be a more disastrous state of affairs than that which places a majority of the journals and periodicals of the country in a position where, in many instances, they are daily scattering falsehood and withholding truth? This particular discussion need not be farther extended. The Government should withdraw the publication of its laws from the newspapers of the country, and newspaper attachés should be excluded from the public service.

An extended discussion of the constitutionality of this scheme is not pertinent to the purposes of this chapter. Remarks in this connection will be confined within the limits of a statement showing the utmost possible change

in our organic law which the adoption of this system would necessitate. Such a change would, without doubt, embrace the one-term principle for the President of the United State, the prohibition upon members of the service from engaging in State politics further than exercising the privilege of the elective franchise, and possibly the other provisions of ineligibility for appointing agencies besides that which attaches to the chief executive. Beyond this we are of the opinion that no constitutional change would be required. The claim, however, might be advanced that the exclusion of newspaper attachés from positions in the service would be a violation of our organic law. We think not. At all events, the attainment of these four points would be the extreme outpost of a constitutional amendment requisite to perfect the scheme.

An outline of the most prominent features of an act of Congress necessary to accompany the constitutional change above defined in order to establish the proposed system will now be given. The same should provide a bar upon Congressional recommendation to office; the ineligibility of heads of Departments and other appointing agencies for office under the General Government during the next succeeding Administration, unless secured by constitutional amendment; the election of local officials as stated; the exclusion of members of the service from other offices under a State or the United States during the rule of the Administration by which they were appointed; a rule against political assessments; a tenure of office for members of the service, conditioned upon good behavior, to last until removal by the next succeeding Administration; the payment of larger salaries, at least double the present allowance; the exclusion of newspaper attachés from positions in the service, unless secured by constitutional amendment; the establishment of a Government journal or periodical for the publication of laws; and, lastly, as to

the feature of apportionment and its collateral requirements. At the opening of the session of Congress next preceding the close of every Administration the several Departments of the General Government should be required to furnish that body full data in reference to the present and prospective wants of the service, upon the basis of which an apportionment of offices should be made by Congress among the several States in proportion to their representative population as shown by the last census of the General Government. Upon this general apportionment of Congress the legislatures of the several States should be empowered to make, either directly or indirectly, a sub-apportionment among their respective cities, towns and villages in accordance with the census above stated. At any time after the adjournment of the session of Congress above named, prior to the inauguration of the next succeeding Administration, a section of the law should provide for the registration of the names of all applicants with some constituted United States authority like the district courts, each person registering to put the character of his politics upon record, that the appointments might be made proportionately from all parties, and no registration to be allowed except with the evidence of intelligence already stated. Immediately after the inauguration of the new Administration a drawing should be made, under the direction of the same United States authority, of a number of registered names two or three times greater than that of the offices to be filled, and from the list so resulting the appointing agency to make its selection; in case the registration of any State should not equal its allotment, the appointing agency to make up the deficiency by proportionate selections from the unexhausted list of drawn names of the other States; and in case the service should require additional force between the Congressional apportionments and drawings above stated, the appointing agency to supply

such demands in the same manner. As intimated in a prior connection, a provision of the law might direct the appointors to make their selections proportionately from the respective political parties as shown by the registration. A provision would also be extremely pertinent and wholesome that the space of one year should be absorbed in effecting this regular change of officials, an equal number of appointments to be made each month of the year, and removals to be made in the order of appointments. This would bar the possibility of doing violence to the interests of the service and the country through the presence of an entire force of inexperienced officials, without destroying the tenure of office in respect to the element of time.

The advantages claimed for this scheme of civil service are nearly all embraced in the statement that it would entirely separate it from politics without prejudice to any party or class, remove its officials wholly beyond the reach of influence of every description, equalize opportunity, and prevent the possibility of its being made the means of personal or party aggrandizement. Its basis is merit. It leaves nothing to discretion, and consequently, relatively speaking, bars every door for the perpetration of fraud or the use of bribes. It abolishes favoritism, and puts all parties, classes and individuals upon an equal footing. *It, in short, tends to inspire a motive in every one connected with the service, whether appointor or appointee, to do right instead of wrong. In addition to all this, it is perfectly simple, practicable and capable of adoption.*

The beneficial results of such a system would find expression in many collateral circumstances. The President of the United States would be dispossessed of every vestige of power for influencing the masses and controlling the politics of the country, be placed under the heaviest bonds to govern his official action by considerations for the material prosperity of the people and the nation, and at

the same time be able to command the respect which the dignity of his office imperatively demands. Instead of a dealer in political haberdashery, he would be an executive whose only aim would be the promotion of the public weal. The same with the members of the national legislature. They would be relieved from the importunity of office-seekers, elevated to a position of perfect independence, and spurred to the utmost diligence in the performance of their legitimate duties, for by this means alone, and not by begging favors of the executive and heads of Departments, could they secure a continuance of their official status. The heads of bureaus and other appointing agencies would cease to barter place for personal political support; the members of the service, instead of facile sycophants, would be free-thinking, intelligent men; the exercise of the elective franchise would be in accordance with actual conviction, and elections consequently no longer a lie; primary meetings, State and national conventions would have for their object the advancement of local and general welfare, instead of a chance at the "spoils;" Federal interference in State elections would cease; a genuine freedom of the press be secured; the national Administrations would cease to be dealers in the stock of newspaper corporations, as occasion required, for the purpose of directing the tone of the journals of the country; and private character would be elevated, emulated and duly esteemed.

III. CRITICISM OF THE REPORT OF THE CIVIL SERVICE COMMISSION.

An act of Congress of March 4, 1871, authorized the President of the United States to appoint a commission for the purpose of devising rules for the reformation of the civil service. The commission was appointed at an early day after the passage of the act, and consisted of George William Curtis, Alexander G. Cattell, Joseph

Medill, Dawson A. Walker, E. B. Elliott, Joseph H. Blackfan and David C. Cox. During the latter portion of the same year (the report is not dated) the commission reported to the President. Upon the prominent characteristics of this report a little comment is now proposed. It is but simple justice to state, in the outset, that the power of the commission was limited, impliedly at least, to the formation of a system under existing laws ; or, in other words, it was expected to devise a scheme which would not require any legislation to put it in operation, save an appropriation for the payment of incidental expenses. Its office, in short, was simply to mark out a line of action for the President under an existing statute. *It was to tell the chief executive how to do his duty.* Criticism upon the work of the commission, consequently, must not touch upon matters outside the scope of its office as above defined, must not declaim against the absence of reform measures attainable only by legislation or constitutional changes, but be confined to a search for defects in the means prescribed by the report.

The general statement is now advanced that the scheme devised by the commission is, to a great extent, both inadequate and impracticable. *Its fundamental element is a plan of competitive examination as to the fitness of applicants for positions in the service, both the character and method of such examination to be directed by creatures of the President alone.* To more fully state the proposition and defend the next preceding sentence from any possible charge of unfairness, let the report of the commission speak for itself—namely: “We propose, therefore, that under the section of the act already quoted he (the President) shall employ suitable persons to act as an advisory board, which shall regulate and supervise all the examinations mentioned ; and that he shall further designate three persons in each Department as a board of examiners, who

shall conduct the examination personally or by persons approved by the advisory board and under its immediate supervision." A brief consideration of both the principle of competitive examination in the abstract, and its application to a system of civil service, will portray the inadequacy of the general scheme. Its impracticability will also appear in the discussion of its application. Of these in their order.

The worth of oral or written examinations as a test of intelligence or merit, whether conducted upon a competitive basis or otherwise, is measured entirely by the extent of their operation. If an attempt is made to push them outside of restricted limits, they speedily degenerate into nothing less than an ostentatious farce. It cannot be otherwise. As applied to the purposes of admission to institutions of learning, where the number of applicants is comparatively small, or to those of graduation, where the list of aspirants is similarly curtailed, the principle is, for the most part, both adequate and practicable. It is so simply because it can be applied with approximate completeness. But when it is invoked, so to speak, to open the door to any *public* or *quasi public position* of whatever sort, the applicants are generally so numerous that a thorough, and consequently a just, examination is wholly impossible. The result is, that the capacity of those submitted to examination is *guessed at, but never ascertained*. These are not mere naked assertions. Their truth is attested by experience in very many directions. As a single illustration, let the examination of applicants for permission to practice in the courts of the several States be briefly alluded to. These examinations, numerically speaking, are mostly confined to cities, and it is no exaggeration to say that they are a libel upon truth, a disgrace to American education, and an insult both to the profession and the general intelligence of community. In the city of New York there are at least

two hundred applicants annually admitted to the Bar of the State after an examination by the Supreme Court, one-half of whom are wholly incapable, and of the balance not more than one-third are ordinarily prepared for the discharge of the duties incumbent upon the position. The same is equally true, relatively speaking, of legal examinations in the provincial cities throughout the entire country. The foregoing finds ample warrant in the fact that out of the aggregate number of admissions to the Bar in the United States, only forty per cent. are able to sustain themselves in the profession, and that three-fourths of the law-business of the country is prosecuted by one-fourth of the lawyers in active practice. Illustrations need not be multiplied.

Turn for a moment from this more general view of the principle of examination as a test of intelligence to a relative discussion of the same as applied to our civil service. The number of offices which could be secured only by passing a prescribed examination in accordance with the report of the commission is at least fifteen thousand. There are seven great Departments of the General Government, and from each of these three men are to be selected to conduct the examination, making twenty-one in all. The scheme contemplates, moreover, that the examination shall at least find three capable applicants for every office, from which list the appointments are ultimately to be made, which would be forty-five thousand. The inquiry is pertinent, How many applicants would be submitted to an examination for the purpose of making up this list? Of course all that might present themselves, as directed by one of the rules of the scheme, and it is perfectly safe to say that they would number two hundred thousand. The premise is also a fair one that by reason of the usual mutations of time the *personnel* of the service would entirely change with the lapse of every decade, so that the examiners would annually be obliged to pass, on an average, upon the ca-

capacity of twenty thousand applicants. Now, is it in the possibility of things to declare the supposition in any way tenable *that twenty-one men would or could, either directly or indirectly, make an examination of the capacity of twenty thousand individuals which would be anything more than a stupendous fraud?* The term is not used as an imputation upon personal character, but as the only one which rightly defines the natural result of such an impossible task.

These are two features of the inadequacy of the scheme of the commission. They are inherent in the plan itself. The third, last and worst of all is extraneous—not intrinsic—to the principle of competitive examination. It appears in the machinery by which the examination is to be conducted, the motive-power which is to direct and manage the entire institution, and the evil results which will flow therefrom. Let recourse again be had to the words of the commission before cited. *The President is to appoint both the advisory board and the examiners. The advisory board possesses the exclusive right to define the character of the examination, and the examiners may conduct it either directly or indirectly.* These provisions alone condemn the entire scheme. They do not *remove*—nay more, they do not even *palliate*—the evils of the present system. They simply change the channel through which present abuses make their way. They merely add two more links to the chain which encircles the defects of the present institution. The truth of this statement is seemingly self-apparent, but a brief examination may render it a little more plain.

The report of the commission lays great stress upon the point that the scheme defeats the possibility—or probability, at least—of “*political pressure.*” That the scheme leaves the service entirely *unprotected* from “*political pressure*” is precisely what the present portion of this discussion endeavors to maintain. The scheme leaves the service, in fact, as wholly subject to *influence*—as much an appendage

and instrument of party politics—as where it finds it. It only establishes a little more circumlocution. It leaves everything to *discretion*, and to the discretion of whom? *The President of the United States.* The entire machinery of the system, in every part and parcel, is the direct creature of the chief executive, and his simple mandate, so far as the civil service is concerned, may transform ignorance to intelligence and capacity to inefficiency. Is the question asked, Does not the force of the foregoing rest entirely upon the anticipation of fraud and corruption? Precisely. Were it not for fraud and corruption we would need no reform. It is just these elements which the commission was formed to exterminate, and it is just these elements which have prostituted the entire service for the last forty years, and never so shamefully as at present. It is these identical forces, moreover, which will ever make the service a by-word and a reproach, a huge auction-block for the sale of office for a consideration of political support, *until the motive is destroyed which suggests this institution.* And this result is not even approximated by the scheme. It is perfect folly to suppose that the executive and legislative departments and the leading politicians of the party in power are going to abandon the “spoil”-system of the last half century, simply because the red tape of an advisory board and a bureau of examiners—in all not thirty persons—are to be added to the details of the present plan. The system would be manipulated in the interest of the party in power in less than six months after its inauguration. The President would want a re-election and would still court the favor of Congress. Members of this body would also want a continuance of official status, and they would be called upon by their constituents to prove their capacity before the examining board, or else give way to a man who would. The vast details of party politics, from the duties and aspirations of the chief executive to the or-

ganization of a village caucus, would be as closely wedded as now, and the new system of civil service would be the most potent agency for the execution of their schemes. The President would appoint an advisory board and a bureau of examiners who would do his bidding ; Congressmen would tell these officials who were capable and who were not ; and upon this foundation alone would this system of competitive examination rest. It would, in short, be a system with the old slogan, "To the victor belong the spoils of the enemy." The foregoing comment must not be taken as an imputation upon individuals in any single particular. The parties engaged in the interest of the present system are all honorable men, with names above reproach and reputation unscathed. Such men, indeed, are always employed to give character to any new institution of whatever sort, but what is the warrant of their ascendancy? None. And it is for the distant future, not alone the immediate present, which a genuine civil service reform must necessarily provide.

Thus far, the inadequacy of the system has alone been considered. In respect to its impracticability not a word need be offered. It fully appeared when the application of the principle of competitive examination to a scheme of civil service was under discussion, in the impossibility of a score of officials to *correctly* pass, either directly or indirectly, upon the capacity of twenty thousand individuals annually. The scheme is as unwieldy as it is inefficient.

There are several minor defects which might properly furnish a theme for discussion were they not rendered, relatively speaking, entirely insignificant by the gravity of the ones already alluded to. With this brief reference, therefore, they will be summarily dismissed, together with the report of the commission in general, with the additional remark that the deliberations of this body resulted in all that could be reasonably anticipated, since it

was not called upon to suggest changes in our organic or statute law.

It is perhaps proper to add in this connection that the system suggested by the report of the commission has proved a failure in the outset, not so much by reason of the causes hereinbefore mentioned as from the insincerity of the executive department in its enforcement. It has been ostensibly put in operation when convenient, and disregarded when its institution would prejudice the interests of the party now in power. The course of the executive in this respect, however, so far as the proposed scheme of the commission is concerned, has merely operated as a discount of time. The defects of the system were positively certain to secure it an ultimate demise. The President has merely provided it with a premature death and anticipated the day of its interment; for which, so far as the plan of the commission is at issue, let him have thanks. Past abuses were sure of gathering strength instead of suffering decay under its operation, and the President's obligations of courtesy to the commissioners is a matter of their exclusive concern.

PART III.

INDUSTRIAL AND REVENUE LEGISLATION.

PRELIMINARY.

THE subject-matter of the present Part of this treatise naturally resolves itself into a somewhat restricted compass. Particularly as applied to the purposes of the entire work, the separate topics which it presents for consideration are few in number. The issues of American politics in this direction are indeed all embraced within the limits of the discussion growing out of the subjects of Protection and Free Trade, Tariffs and Taxation. Of these, both in the abstract and also relatively, as applied to the present exigencies of the United States, and in the order above named.

CHAPTER I.

PROTECTION AND FREE TRADE.

The Inherent Difficulties of the Question—Like the Entire Theme of Political Economy, it is not Responsive to the Rules of Pure Science—The Statement Corroborated by Eminent Authority—The Method of the Opposing Forces—Protection and Free Trade Defined—The Conditions upon which the Opposing Doctrines Rest—The Limits of the Respective Systems—Free Trade is Passive, Protection Active—Protection Merely Secures the Possibilities of Capital and Industry—Cheapness and the Law of Price considered—The Effect of Protection thereon—Protection Seeks its Ends by Means of Tariffs upon Imports—Protective Tariffs do not Enhance the Price of Imports to the Extent of the Burden Laid upon the Same—The Law of Competition makes such Enhancement Impossible—The Principle Illustrated—Protection does not Divert the Employment of Capital and Industry to their Prejudice—The Point considered at Length—The Same of National Prosperity—Protection does not Foster Monopolies, either Individual or Local—Protection does not Encourage Ignorance—Protection is not Taxation—Protection does not Bar Exportation—The Force of Natural Law in this Connection—National Prosperity based upon Producing Power—Protection should be Stable—John Stuart Mill in Support of the System—The Moral Aspect of the Question—Rude and Skilled Labor—Agriculture and Manufactures—Cities and Villages—It is a Question of Civilization or Barbarism, Progress or Decay—The Proper Policy for the United States—The Absolute and Relative Conditions of the Country stated—In View thereof Free Trade Points to the almost Universal Pursuit of Agriculture—Free Trade, by Reducing Cost of Raw Material, would not put our Industries on an Equal Footing with European Ones—The Case of England Cited—Its Position Dissimilar to that of the United States—No Analogy between them—The Reason England advocates Free Trade—The Question of the Laboring Classes in this Connection—England Owes her present Commercial Status to Pro-

tection—Skilled Labor never a Drug—Protection at Present the Proper Policy of the American Republic.

THE exposition of the subject above named is perhaps the most difficult task assumed within the limits of this treatise. The writer who essays its elucidation, however facile his pen, extended his information or mature his judgment, finds no little difficulty in defining the boundaries of his proposed discussion. The topic is intricate in character, comprehensive in operation, voluminous in detail, prolific in results, *and utterly unsusceptible of a reduction to such general principles as will admit of a uniform application.* Do the words above italicized deny the claim of this theme to be ranked among scientific subjects? In one sense, no; in another, yes. The fundamental principles of protection and free trade—*the reason of their adoption*—are everywhere identical, but, this point passed, the events consequent upon their inauguration under different conditions and circumstances are so perfectly inconsistent that it is entirely impossible to predicate, upon either of these doctrines, a law of cause and effect which shall be changeless and universal. The same may be truthfully said of the entire science of political economy. *The reason of the institution of its laws is always the same, but the results of their application vary with every occasion which invokes their aid.* The reason of this is not occult, but on the contrary entirely manifest. Pure, legitimate science, in its restricted sense, not only deals with entities which are always precisely similar in character—in their component parts—but *which are also always subject to precisely similar extraneous forces.* In political economy this duplex principle has only partial sway. The elements grasped by its laws, as in the case of pure science, are ever identical, *but the collateral agencies with which they are brought in contact are dissimilar and indeterminable.*

These are rigorous statements, but they point, in substance,

for corroboration to authorities which few will presume to question. Said Samuel Laing: "Political economy is not a universal science, of which the principles are applicable to all men under all circumstances, and equally good and true for all nations." But more emphatic still are the words of America's greatest statesman, Daniel Webster. Said Mr. Webster: "Though I like the investigation of particular questions, I give up what is called the science of political economy. There is no such science. There are no rules on these subjects so fixed and invariable as that their aggregate constitutes a science."

Within the scope of these remarks is found the cause of the widely-varying opinions upon the doctrines of protection and free trade. The supporters of the latter invariably argue upon the premise of a changeless law of cause and effect. They lay down a proposition, and declare that the results of its operation will be the same under all conditions and circumstances. They proceed, in short, by *deduction*, and their conclusions are purely theoretical. The advocates of protection, however (let not the reader be here misled—Protection has not yet been defined), reason from exactly the opposite basis. They start with particular facts and circumstances—with special conditions—and therefrom mould their law. Their method, in fact, is that of *induction*, and their conclusions are the results of experience.

In view of these conflicting lines of thought it ceases, perhaps, to be a subject of surprise that the discussions of the opposing parties often degenerate into acrimonious charges of "absurdity," instead of intelligently resorting to logic and the teachings of reason for the purpose of rendering their respective positions untenable. The statement is by no means an exaggeration, that not only have the discussions of protection and free trade been exceedingly prolix with matter entirely irrelevant, but also that

they have been characterized by the fiercest partisanship, bigotry and unreasonableness.

Without a commission at present to either of these doctrines, the limits of both this and the next succeeding chapter will first be stated, the order of argument for the present one then given, and the same pursued with the utmost possible conciseness and logical precision. The scope of both chapters will be here defined, by reason of the fact that, so far as the purposes of this treatise are concerned, they are component parts of the same general discussion. The present chapter will consist of an exposition of general principles, and the following one upon Tariffs, after a brief consideration of that topic in the abstract, will be devoted to a view of their application. In other words, this immediate discussion will deal with the fundamental truths alleged as the embodiment of the doctrines of protection and free trade, while that upon Tariffs, the abstract question having been first disposed of, will have to do with their detailed employment in the form of law.

The discussion now in order will be conducted as follows—namely :

- I. Protection and Free Trade Defined ;
- II. The Conditions upon which the Opposing Doctrines Rest ;
- III. The Limits of the Respective Systems ;
- IV. The Collateral Tendencies of the Two Institutions ;
- V. The Proper Policy for the United States.

I. PROTECTION AND FREE TRADE DEFINED.

The meaning of free trade is in no respect ambiguous. The doctrine is susceptible, in a very few words, of a definition which is both exact and comprehensive. Its name, in fact, clearly indicates its character. It means an absolute, unqualified right in every individual to buy and sell any and every commodity in any and every market of the

world, without any legal restriction whatever. In other words, it demands that traffic shall never be made the subject of legislation. It is a plea, pure and simple, for the universal enforcement of the maxim *Laissez faire*. It is emphatically a "let-alone" system. This, and only this, is free trade. Institutions such as "tariffs for revenue" are, in theory and principle, as dissimilar to it as the rival doctrine of protection. They simply approximate to, but do not represent, the system. Any condition of things, in short, which imposes the *slightest* restriction upon the absolute right of traffic stated in the outset ends the existence of free trade. A perfect appreciation of the real nature of this doctrine, as above defined, will greatly assist the further investigation of the present subject.

The theory of protection, substantially speaking, is equally well defined by the name which designates it. The term "protection," however, differs from that of "free trade" in that it is complex, while the latter is simple. The first is the nominal representative of a combination of ideas, while the latter is the exponent of only one. Protection, therefore, will require a more extended exposition.

Protection is not merely the reverse of free trade. The latter, in its restricted, legitimate signification, attaches solely to the purchase and sale of commodities. The first, single and ultimate end which it seeks to accomplish is absolute freedom in respect to such purchase and sale. The former not only places an inhibition upon this absolute freedom of traffic, but in so doing lays its hand upon capital and industry. It is only to grasp these two latter elements, indeed, that it reverses the wheels of the free trade system—that it restricts the freedom of traffic. A hold upon these two elements is its ultimate purpose, and for the attainment of this end it pursues a course, it is true, exactly opposite to that of its antagonist. The distinction in respect to these characteristics of the opposing systems is all

important, and may be reduced to the following proposition: The end of free trade is freedom of traffic, while that of protection is *the guardianship of capital and industry by means of restricting such freedom.*

The above comparison prepares the way for a general definition of protection, and the position is here assumed that *protection is the security of the possibilities of capital and industry.*

II. THE CONDITIONS UPON WHICH THE OPPOSING DOCTRINES REST.

The present sub-subject will be disposed of nearly as briefly as the next preceding one. It is only intended, in this connection, to point out the peculiar status of things which can alone decide between the different systems as the proper policy for a nation to pursue. The determination of this question seems in no way difficult. Upon the premise that the definitions of the opposing doctrines above given are correct, a key is thereby furnished for the speedy solution of this inquiry.

Referring to the meaning of the doctrine of free trade as stated in the outset (purely unrestricted traffic), the proposition is ventured that the system constitutes a perfectly sound and defensible national policy where the relative position of the country which adopts it is, in all respects, *equal* to that of those with which it may hold commercial intercourse. Superior it *may* be, equal it *must* be, but *inferior* never. It cannot be otherwise. The simple idea of free trade is indicative of *strength*. It is suggestive of fearlessness—of independence of position—by virtue of the fact that natural or artificial causes have given a status of either superiority or equality. Free trade is in every respect amenable to natural law. This law, in common with all superhuman forces, never works its own stultification. Both the rules of its application and the results thereof, abstractly

speaking, are ever the same; and as free trade is a pure, simple, unqualified trial of *strength* in one direction, the same principle which attaches to the contests of power in general is impossible of avoidance in this single particular: the stronger party will triumph, and the weaker will bite the dust.

Is the premise denied? Is not free trade a mere battle of abstract power? The affirmation of the last interrogatory seems entirely tenable. The system of free trade attaches to traffic—the latter deals with commodities; and the ability of an individual or a nation to successfully compete in their exchange *depends entirely upon the advantages possessed for their production*. This ability to *produce—this creative power*—governs the entire question, and the rival possessing this power to the greatest extent—in the most perfect degree—will occupy the foremost position among the competitors of the trafficking world, by reason of the fact that this superior producing force stamps its products with a characteristic which attracts universal patronage—*cheapness*. The elements which make up the position of *equality* necessary to permit a nation to safely incorporate the doctrine of free trade into its economic law are numerous, and, in the abstract, unsusceptible of exact definition. In the light of comparison they are, in no respect, unclouded. They consist of age, extent of territory, cost of carriage, perfection and expense of labor, value of capital, the ease with which indigenous climatic or local products are secured, and other considerations dependent upon peculiar circumstances and conditions. They will appear more in detail in a subsequent portion of this discussion.

The gist of the foregoing remarks may be reduced to the simple proposition that the only minimum condition upon which the system of free trade is defensible is that of absolute *equality*, that the institution of the system is a mere trial of *strength*, and that, as a natural consequence, the

competitor possessed of the greatest creative power will worst all other rivals in the strife.

If an advocate of the system demands, in this connection, the allowance of the claim that when the position of equality above stated has been reached by a state or nation, free trade is the only proper, legitimate law of traffic, his prayer, upon general principles, is granted. A detailed discussion of the question, with an examination of the exceptions to the rule, is not particularly pertinent to the purposes of this investigation.

The conditions of protection, in a general sense, are, for the most part, the reverse of those of free trade, but the line of reasoning which makes these conditions apparent is *inverse* to that which demonstrates the basis of the opposing doctrine. Free trade is defensible because the nation which adopts the policy is able to stamp its own products with the impress of cheapness, and the plea of defence begins with the assertion of such *cheapness*. Protection, on the other hand, commands respect by virtue of the fact that such cheapness of home products does not exist, but the argument which presents the system to public favor starts with the declaration of inadequate production, and not with the allegation of the high price of home commodities. This is no libel upon logic. The advocates of the opposing theories by these arguments state the *cause* which induces their demand. The claimants of the one plead *cheapness*—the soul-essence of the system—as the foundation of their claim for free traffic; while the supporters of the other urge inability to assure such cheapness—that is, inadequate production.

The adoption of protection denotes relative infancy and weakness. It is a confession of inequality, of inferior status. It is a frank acknowledgment of amenability to natural law by an admission of inability to cope with the strength which a free-trading nation opposes to its compet-

itors. It is a sound and defensible policy for a nation to pursue when its facilities for the production of commodities are *unequal* to those of other countries with whom it may hold commercial intercourse. The conditions upon which the system rests, in short, are the necessities of a people to protect the weakness and imperfections of their producing, creative power against the superior force and strength of their rivals. The badges of inequality which render the institution of the system a necessity fully appeared in the comparison made between free trade and protective nations in a prior portion of the examination of this sub-subject.

Further space will not be devoted to this immediate topic of consideration. Like its predecessor, it has been disposed of with intentional brevity. The object of the respective inquiries was to ascertain what free trade and protection *are*, what they mean, and to define the basis of the opposing systems. Have the definitions and conditions of these two laws of economics been too summarily dismissed? Possibly. The subject of this chapter, however, is a much-abused one, and its examination has many times been characterized by the interpolation of irrelevant inquiry. Its intricacy cannot be thus removed. On the other hand, it is thereby increased. The less the record is cumbered with redundant matter, the more satisfactory will be the result of the investigation. What protection and free trade *are not*, what are the results of their operation, or what are the objections raised against the respective systems, was not the object of these two disquisitions. Those considerations are of paramount import, but thus far they are irrelevant, and nothing was to be gained by their anticipation. They will by no means be omitted, but the brief analytical statement above made of what are thought to be unimpeachable truths was looked upon as the most efficient pilot to the open sea of discussion upon which the contending theories

have so long and so hotly waged their unremitting war. Upon this stormy sea we are now afloat, and, with our knowledge of the character and requirements of the sail which traverse its waters, an attempt will be made to fathom the under-current of truth that sleeps beneath the tempest of the surface wave.

III. THE LIMITS OF THE RESPECTIVE SYSTEMS.

In respect to this branch of the main discussion, the treatment thereof (if the paradox may be allowed) will be single and yet duplex. The line of argument to be pursued, moreover, is natural and not artificial. Free trade, so to speak, is a passive policy. It exists, as it were, by virtue of the absence of legislation, and its derelictions, if any, are those of omission. Protection, on the other hand, is an active institution, and owes its life to the generating power of statute law. Its excesses, if any, are those of commission. This investigation, therefore, will seek, for the most part, to trace the boundary-lines beyond which the *active, aggressive policy of protection should never pass*. By this method the limits of protection will not only be ascertained, but also those of free trade, for outside of the scope of protection the rival system has undoubted, exclusive right. In other words, free trade, relatively speaking, is the law of nature. How far, by reason of uncontrollable causes, this law shall be curtailed by protection, gives us the legitimate sphere of both systems.

If the definition of protection is for a moment recalled—the security of the possibilities of capital and industry—we find a beacon-light whose reflection clearly and sharply designates the boundaries of its rightful domain. The security of the possibilities of capital and industry consists in the equalization of producing, creative power. The equalization of producing power, moreover, consists in the establishment of a uniform degree of cheapness. The

control of this last element (if the expression may be allowed) is and must be associated with goodness, the chief and great aim of successful production.

As cheapness, with the above qualification, is the chief end of commodity-creating power, we are forced at this point, in order to proceed intelligibly, to make a brief examination of the abstract law of *price*. Price is of two kinds, market and natural. The market price of commodities is artificial, and depends upon the law of supply and demand. Demand, moreover, as to its extent, is governed by the excess or deficiency of the supply. The natural price of commodities is the true exponent of their intrinsic value for purposes of use, consumption or exchange. The factors, the component parts, of this natural price are three in number—namely, rent, profit and wages. The first denotes the compensation paid for the use of premises and capital; the second, the remuneration necessary to insure a continuance of production; and the third, the expense of labor. It cannot but be evident that all these forces are weights upon the power of production, and the greater the weight the higher the price of the commodities in which such production eventuates. A diminution of these burdens is followed by a reduction of price.

Resuming, for a moment, the line of thought dismissed with the commencement of the next preceding paragraph, as *cheapness* must be the aim of successful production, and as the advantages of the producing power determine the extent of price, we are prepared for the proposition that the *limit* of the office of protection is such an enhancement of the price of foreign commodities, by force of statute law, as will *in the outset* give them the same degree of cheapness as those of home production. As to what commodities the law of protection should attach, the same will appear hereafter.

At this juncture various attacks are made upon the sound-

ness and feasibility of the protective system. A repulsion of these attacks will now be essayed, together with a maintenance of both the correctness and desirability of the proposition above stated.

The system of protection, as already intimated and is well known, seeks the attainment of its end by means of a tariff upon imported goods. The discussion of tariffs, in either their abstract or relative bearings, is not necessary in this connection. The same has been set apart for the next succeeding chapter, and the nature of the institution is too familiar to require its anticipation.

One of the principal objections raised by the opponents of protection against the system consists in the charge that the tariffs imposed upon foreign goods by such a policy enhance the price of domestic commodities of the same kind in a sum equal to that of the impost, and that until such impost is removed. This is, indeed, the chief onslaught upon the system. The free trade theorists marshal the majority of their forces at this point of attack, and dignify it as the object of ceaseless hostility. It is, in short, a rendezvous for the assemblage of the entire host whenever sallies upon other defensive positions are unsuccessful. The favorite language of the combatants, "The position is absurd," will not be adopted in this connection. It is simply pronounced wholly untenable, and in refutation thereof the proposition is declared that *the sole ultimate agency which governs price, under all circumstances, is the cost of production*. This truth fully appeared, although somewhat indirectly, in a prior portion of this discussion. Its proper elucidation, if only brief, will effectually destroy the force of the free trade position above named, and attention will now be directed to that end.

A restatement of the *limit* of the office of protection will best prepare the way for this inquiry—namely, such an enhancement of the price of foreign commodities, by force

of statute law, as will *in the outset* give them the same degree of cheapness as those of home production. The deduction is properly made from this proposition, that at the commencement—*in the outset*—of the adoption of a protective system the *general* price of commodities grasped by this impost law is proportionately augmented. Let not the reader be here misled; the words above italicized form an important qualification to the truth embodied in the above remark. By an enhancement of *general* price is intended simply this. A protective tariff presupposes a state of relative weakness on the part of the nation which adopts it; which is a statement in another form that certain commodities can be had cheaper in the foreign than in the home market. The price in the foreign market, free trade ruling, is the "*general*" price, because the cheapest, by virtue of the fact that all other prices must conform to it. A protective impost, therefore, as it increases in the outset the price of tariffed commodities—of foreign ones—increases temporarily the *general* price. This is not, in the main, however, a prejudicial fact of sufficient force to be looked upon in the light of an obstacle. Relatively speaking, it is entirely without weight, and the reason thereof will hereafter appear. At present it is a side issue, and a digression for its discussion will not be tolerated. The statement of its unworthiness must be here taken upon trust: proof of the same will be had in another connection.

The element which renders the continuance of the enhanced cost of tariffed commodities impossible, and one also which wholly neutralizes the charge of the free trade theorists now under consideration, is the law of competition. Without this the enhanced cost above noted would prove coextensive with the reign of protection. This salutary agency, however, bars the transformation of a temporary mean into a continuing evil. It is an inseparable at-

tendant of production, and makes the cost thereof the ruler of price.

Let the statement and the law receive an illustration. Let it be supposed that, owing to inferior advantages, iron cannot be produced in the United States at a price less than \$20 per ton, but that Europe, by virtue of superior facilities, can lay it upon our shores for \$15 per ton. Let the further supposition be made that the former nation imposes a duty of \$10 per ton upon European iron, and under such a condition of things what, so far as the United States are concerned, would control the *general* price of iron? The *general* price of iron, in accordance with principles hereinbefore explained, would be that of the market which could furnish it the *cheapest*, and that market, by force of the tariff above premised, would be found in this country. But press the inquiry a step farther, and what would be the moneyed measure of this general price? How many dollars would the purchase of a ton of iron require? A recurrence to the *price* of American iron at the time of the adoption of the supposed tariff is requisite for a solution of the problem, which, it will be remembered, was \$20 per ton. Immediately with the imposition of the tariff the importation of European iron would be, to some extent, restricted. The call for American iron would consequently increase, the law of supply and demand would assert itself, and just in proportion to the extent of increase of demand would the price of American iron—which for the United States would also be the general price—be advanced beyond \$20 per ton. The advanced price, however, would be artificial and temporary. The former price of \$20 per ton yielded a paying profit (else the iron would not have been produced at all), and the advance caused by the restriction of importation, rendering the production of iron attractive by reason of its extraordinary returns, would speedily draw to the business additional capital; production would be increased, the law

of supply and demand would again interfere, and the general price of iron would recede to \$20 a ton. In other words, the law of competition, which forces all producers of commodities of an equal goodness to make the cost of production the basis of the price they affix to their wares, would render it absolutely impossible for the general price of iron under the hypothesis to stand at \$25 per ton—a sum equal to the original *general* price (that of European iron, \$15) and the amount of the impost. The exact point to which the price would advance, as stated in a prior connection, would depend solely upon the extent of the increase of the demand, and this advance, as also already noted, would be purely temporary. This is not all. By reason of this inducement to production the means therefor would be inevitably multiplied and perfected, the cost thereof thereby lessened, the price of the commodity consequently diminished; thus requiring nothing but the element of time to place the price of the home product at a point which would equal in cheapness that of any and all rivals, when protection may be properly withdrawn.

In the light of unprejudiced, dispassionate reason there seems to be no escape from these conclusions. The above illustration is equally applicable to any commodity to which an impost may attach. It gives proof of a general principle, and not alone of an isolated particular. It is only a simple adherence to the natural law of cause and effect. Individuals are ever watching for opportunity, and capital is always ready to lend itself for what is considered an adequate consideration. The former represent the latter, and competition, the desire for extended traffic, is constantly tending to reduce the price of all products to the minimum point of living profit. These are not theories. They are notorious facts of the history of every-day life. Combinations for the maintenance of artificial prices have always resulted in failure. The attempt of any class of producers

to regularly obtain a price for their products which is measured by the rate of a protective impost, without regard to the cost of production, is nothing more or less than such a combination, and there is not an instance of its success upon record. There always have been, and always will be, plenty of business-projects which do not adequately remunerate capital. It is one of the inevitable consequences of chance. The owners of capital thus employed are ever looking with a restless eye for an opportunity to give it more profitable employment, and by virtue of this fact, with the exception of parties holding such exclusive privileges as patents and franchises obtained by statute law, there is not a producer or trafficker in any section of Christendom who is not compelled to reduce the profits of his business to a limit within from five to fifteen per cent. in advance of the rate of interest which the use of money will command in the country wherein he operates. An artificial force like a tariff is powerless to destroy this law of nature, this principle of competition; and, as stated in the outset, with simply declaring the position of the free trade theorists upon the point in issue untenable, and relying upon the foregoing comment for a verification of the statement, the same is hereby dismissed.

The foregoing considerations are naturally suggestive of another charge made by the free trade supporters against the policy of protection—a charge, in short, which is a logical sequence of the one above examined. Reference is had to the argument that a protective system, in addition to unduly enhancing prices, directs capital and industry from their natural channels, and in so doing not only works the injury of these particular forces, but also discourages and prejudices the entire machinery of the community of commerce. The claim is of a double character, and each aspect of the case requires, although but a brief, a separate consideration.

As to the diversion of capital and industry from their *natural* channels, the inquiry is pertinent, What *are* the natural channels of these forces of the body politic? There is but one answer to the interrogatory—namely: The occupation naturally sought by these agencies is that which affords the greatest remuneration. If the system of protection points in such directions, they will undoubtedly avail themselves of its guidance. But does this fact work the injury of the respective forces? The affirmation of the question cannot be even speciously maintained. A betterment of present condition can by no manner of means be denominated an evil, *at least so far as the direct beneficiaries are concerned*. Individual and national prosperity are not thus jeopardized. The extreme limit of the free trade argument in this direction, however, is not yet refuted. The additional point is made that although in the outset the interests of capital and industry may be advanced by accepting the lead of the protective system, they will encounter ultimate defeat by reason of the extended competition which is sure to attach to all employments that are unusually lucrative. The free trade supporters are here placed in an unhappy position. In a prior connection it appeared that the power of this law of competition was denied, and the price of tariffed commodities was claimed to be regulated by the extent of the impost, without regard to the effect of competition, which makes the cost of production the basis of price. In the present instance, however, the advocates of free trade summon this law of competition to their aid, and argue the overthrow of capital and industry by reason of its operation. The former discussion will not be resumed. The force of the law of competition, however, is here allowed, as it was in the former instance maintained. But this allowance will not substantiate the point above advanced. Capital is timid of hazard, and industry views change with suspicion. The owners of the one and direct-

ors of the other are fully cognizant of the rivalry which characterizes all highly remunerative projects. They need no writer upon either free trade or protection to advise them of the probabilities of failure and success therein. They strictly abide by the law of safety. With a full knowledge that the profits of all pursuits must be eventually reduced to within a compass hereinbefore defined, they will not embrace the vocations which protection allegedly fosters unless the *average* possibilities of success in that direction seem palpably more certain than in their present fields of operation. Errors of judgment, as a matter of course, there are here as elsewhere, but the majority of cases proves the correctness of the above ideas, and the greater portion of capital and industry drawn to new pursuits by a protective system is that which is not earning an adequate consideration in present employment—that which is not paying a living profit.

In respect to the second aspect of the charge in question, that the alleged diversion of capital and industry from their natural channels discourages and prejudices the entire machinery of the community of commerce, the same can be disposed of with equal brevity. The movers of this theory always associate the argument with the statement that the industrial pursuits of a country cannot be extended beyond the ability of the aggregate amount of capital in the country to support them; and that as the capital of a nation is always all employed in the working of *some* industrial enterprise, any shifting of the same tends to the pernicious results above defined. That the extent of the industries of every people is measured by the amount of their capital, there is no denial. That a protective system, moreover, tends to change in a certain degree the employment of such capital, is equally clear; but that the commercial world is jeopardized by the existence of these facts, does not necessarily follow. It is in no respect a natural sequence. The

argument recoils upon itself. The simple fact that a protective system or any other cause entices capital from its former uses is proof conclusive that its prior field of operation was not *ordinarily* remunerative. It is, in short, the most direct evidence that the limits of its old vocation were crowded—that the particular business was overworked. As stated in a prior connection, capital and industry will not be induced to make new adventures without fully contemplating the possibility and probability of success. By virtue of their assurance that every industrial pursuit must eventually be content, by reason of competition, with the receipt of *ordinary* profits (hereinbefore defined), they will not assume the hazard of a new undertaking unless the average profits of their present employment *are less than ordinary*. The office of protection in reference to the point here at issue is within these precise limits. It diverts capital and industry from former channels, it is true. The cause of the diversion, however, is the less than ordinary remuneration received therein, and the reason of this inadequate compensation—of this less than ordinary profit—is simply because the old fields of employment were overcrowded and overworked. Protection, in short, directs capital and industry from unremunerative to remunerative production. *It relieves the crowded and overworked avenues of industry by opening a way to the prosecution of new industrial pursuits—pursuits which have previously been monopolized by foreign countries to the exclusion of the one which is led to invoke the aid of protection.* Are the interests of the community of commerce jeopardized by such conditions? The inquiry cannot be affirmed.

Intimately associated with this exact point, indeed, is the very germ of national prosperity. The real strength of every people is measured by the extent of their producing power. Production, in short, is the sole stepping-stone to a successful commerce, and it is consequently of the

most vital importance that the productive enterprises of a nation shall afford an adequate return for the employment of capital and labor—shall eventuate in products the sale and exchange of which will yield the maximum amount of commercial profit. The operation of protection, as seen in the words last italicized, guides a nation with its capital and industry in precisely this direction. It is not an infringement of liberty. Liberty is but a relative term; it is simply freedom from compulsion. Protection compels neither interests nor individuals. It merely offers inducements, and leaves their acceptance to discretion. So far as it lays its hand upon capital and industry, the foregoing truths, viewed dispassionately and candidly, give ample warrant for the assertion that the system is a mere compliance with the law of self-preservation, a simple position of defence, an equalizer of opportunity, a guardian of infancy against age, a shield for the security of natural advantages.

From these general objections against a protective system the advocates of free trade descend to those which are more special and less comprehensive. One of the most favorite of these minor claims is, that the law of protection is a system of monopoly. The argument has a double aspect, individual and local. Of these in their order. In reference to individuals the point is made that protection enriches the few at the expense of the many. The simple meaning of the term "monopoly" constitutes a perfect refutation of the charge. Strictly speaking, monopolies have no existence whatever in the United States. A monopoly is a vested right to accomplish certain ends *by all possible means*. It is absolute exclusion. Such monopolies, in a relative sense, were incident to the early English law, but have ever been regarded as foreign to the genius and spirit of our institutions. The nearest approximation to a system of monopolies in this country is found in the law of patents and franchises. By virtue of these institutions an

individual, or an association of individuals in a corporate form, can obtain a vested but limited right to accomplish certain ends *by one particular mean*. For example, a patent may be obtained upon *one method* of making steel or communicating intelligence by electricity, but not upon the abstract principle itself. A corporation may obtain a franchise to build a railroad or establish a line of water-travel between two given points within *certain* bounds, but not within *all* bounds. A subsequent inventor of an additional method of making steel or communicating intelligence by electricity, on the one hand, and a projector of a new line of travel between the same points, within different bounds, on the other, can obtain their respective patent and franchise; and so on indefinitely. These are only *comparative* monopolies. But even such monopolies protection neither creates nor fosters. The system does not establish a law whereby parties by individual and corporate name can secure such comparative exclusive privileges as those above named. It opens the door to vocations which afford an ordinary profit. Through that door any who choose may pass, but with the express condition that in the avenues of industry beyond *all parties must be subject to the law of universal competition*. Is that monopoly? Not at all. The opportunities afforded by protection are open to the entire public, and if they seem unusually attractive, every one is at perfect liberty to avail himself of their privileges. Competition is monarch of the field, and monopoly is impossible.

Thus much for the individual aspect of the argument. A word in respect to the local. Upon this phase of the question the claim is advanced that protection builds up particular to the prejudice of general localities. It is difficult to refrain from denominating the position one of absolute selfishness. If a recurrence is had to the discussion of the law of competition, it will be remembered that the indus-

trial pursuits opened by a protective system are only sought by capital and industry engaged in enterprises that fail to realize ordinary returns. Now, let it be supposed that a given locality has *latent* advantages for the production of iron, but that the artificial facilities of foreign countries render its manufacture impossible. A protective tariff is imposed, and capital and industry unprofitably employed (no other will) essay the smelting of iron ore. The enterprise will undoubtedly give the locality a marked ascendancy over others *less favored by Nature*. The comparison to the latter will be disagreeable. But is this a reason why the natural advantages of one point—*advantages which are the germ of enterprises exclusively conducted by foreign nations*—shall be undeveloped? The system of protection contemplates *national* not *local* weal. It does *not* assume to *equalize* the prosperity of all sections of the country. It does *not* assume to make a garden of the wilderness. It does *not* assume to create, but to develop, national strength; and for this purpose it yokes its forces to natural advantages, natural means, wherever it finds them, and in as many localities as possible. The more the better. This is national prosperity, *general* advancement. The charge that protection advances one section at the expense of others is simply to make it responsible for the favoritisms of Nature.

Akin to this claim of the opponents of protection is the one which charges that the system supports ignorance. It does not. Such support is impossible. So far as industrial pursuits are concerned, ignorance is death. Goodness (quality) is an indispensable requisite in all products, whether natural or artificial. No matter how great the contrast in price, the great majority of the consuming world seek a market which offers the *best* commodities, for that alone is real economy. Cheapness, it is true, is the chief aim of all production, but never at the expense of goodness

if the production is to be successful. If capital and industry, diverted to new channels of enterprise by protection, offer the consuming world commodities of such quality as will stand ordinary inspection, they will be patronized—otherwise, not. Self-interest makes the opposite impossible.

The line of this discussion for two remaining purposes must be still defensive—namely, a refutation of the claims that protection is taxation and a bar upon exports. Of these in their order.

In respect to the first, the gist of the argument lies in the claim that a protective tariff enhances the general price of all commodities to which it attaches, together with that of all products of which they form a part. If the primal charge were true, the latter as a natural consequence would be correct. And on the other hand, if the main proposition is false, the corollary one is also untenable. The only necessary position to maintain in this connection, therefore, is that protection does not enhance the general price of tariffed commodities. This has been already proven in a prior connection, when it was shown that by force of the law of competition the cost of production under all circumstances is the sole basis of price—that protection, in other words, is not taxation. The points of that discussion will not be reaffirmed. The same can be referred to at option. Relying thereon, it is sufficient here to simply say that neither does a protective impost augment nor its removal reduce the general price of tariffed commodities.

The final aggressive point made by the opponents of protection embodies the theory that the system prevents the exportation of home products. A nation, they say, must buy if it expects to sell. Relatively speaking, the last proposition is correct. The position of the free trade theorists thereon, however, is deceptive. The idea they

essay to clothe with this language is that if by a protective tariff the importation of *special* commodities is diminished, *the aggregate exportation of all products is proportionately reduced*. That is, for example, if the United States by an impost upon iron prevent the importation of a quantity of that metal to the value of \$50,000,000 per annum, our total moneyed exportation of coal, cotton, cereals, manufactured goods, and everything, in short, which helps to make up the list of our salable products, will experience a corresponding or greater yearly diminution. The argument is specious, but not defensible. It is a violation of the fundamental principles of the law of exchange. There may be, as there have been, it is true, isolated instances in which, simply as a measure of retaliation, nations have resorted to acts of legislation looking to a total or partial prohibition of the purchase of products of other countries which have shielded their industries with a system of protection. An impost which is imposed merely as a *lex talionis*, however, instead of a needed measure of protection to home industry, will be allowed but a brief existence; for, as it fails to promote either individual or national prosperity (as it is not protection), it amounts to nothing more or less than self-inflicted punishment. It is a contradiction of self-interest, of ordinary prudence. The incentives to profitable traffic will work the speedy destruction of a barrier so purely artificial and unnecessary. But in the absence of such retaliative measures the opponents of protection press the point that politic considerations will induce the former purchasers of a protective state to withdraw their patronage, and prevent the addition of new names to its list of customers. Impossible! An illustration, prefaced by the statement of a general principle, will best serve the inquiry. A protective tariff is only imposed upon such commodities as those in the production of which a particular nation is obliged to engage in an

unequal strife with other countries. Or, to state it negatively, the system of protection never lays an impost upon such commodities as are not or cannot be produced within the country subject to its laws. Now, for the example promised, take the cases of the United States and England. Both countries are engaged in the manufacture of iron and steel. The former, relatively speaking, is alone a producer of cotton and tobacco. The United States lays a protective impost upon iron and steel in order to neutralize the force of the superior facilities, resulting alone from age, which England possesses for their production. The sales of iron and steel from England to the United States are consequently very materially diminished; but will England, by reason of that fact, cease to buy cotton and tobacco of this country? Only in one event—namely, *when the United States cease to put in market cotton and tobacco of equal quality for a less price than other producers of these staples.* Man, as Aristotle says, is a reasoning animal, and in pecuniary matters, at least, adheres rigidly to the maxim of the English classic, that “The better part of valor is discretion.” Nations are made up of individuals. The former act only as the latter direct. Government exists only as its people prosper, and in the case above mentioned the English people—England—are not going to increase the cost of their annual supply of cotton and tobacco by, say, \$50,000,000 or any other sum, by buying their staples in a dearer market than the United States, simply to spite us for protecting the manufacture of our steel and iron. The elements of quality and cheapness, associated with the general principle which prefaced the above illustration, govern the entire question.

The same general law as is embodied in the foregoing will apply to all products of our own or other countries to which the system of protection does not attach. Nearly every nation has a climatic or local patent of Nature for

the exclusive, or very nearly the exclusive, production of certain commodities. Competition with it, if not impossible, is useless. For these special products it is the market of the world. God, by the law of Nature, has so ordained. *The sale of such commodities, relatively speaking, constitutes under all circumstances the whole of a nation's export trade.* What is the agency that can prevent such sale? None. Both protection and free trade are powerless in the premises. If the world has only *one* market in which to purchase coal, in that market it *must* buy. If it has two or more markets, quality considered, it will buy in that which is the cheapest. But allow, for the moment, that the system of retaliation will be adopted. It makes no difference. Those products which bear the impress of a local or climatic patent will be bought by *some* one. Commerce will not nor cannot be restricted by such means, and it is only a question whether the sales shall be direct or indirect, or, in the language of traffic, whether there shall be a "middleman" in the transaction; that is, in the case above stated, shall England buy cotton and tobacco of the United States, or of another nation which has purchased therefrom?

The discussion of this immediate sub-subject will be concluded with two general allusions, both of which are of paramount import. Material prosperity is the real foundation of national greatness. The former is measured by the extent of a nation's producing force. Production, in short, relatively speaking, is the sole means for the promotion of the general welfare. The absence of it in new countries denotes repose, and in old ones is conclusive evidence of decay. Commerce is but the world's vehicle for the transportation of the products of industry: production is the supply-store from which it gathers its freight. It is the boundary-line between a purely nomadic life, which is but one remove from barbarism, and a general status of exchange, which is the primal exponent of civilization. It is

the origin of both individual and national wealth. These are condensed statements of general truths which have been so fully elaborated in prior connections that their correctness will hardly be assailed. A maintenance of the *general* proposition that production is an absolute prerequisite of national prosperity is certainly wholly unnecessary.

From this premise the deduction is both logical and forcible that the greater the *resources*, so to speak, of production, the more rapid the pace of general development—that the more numerous the agencies which are placed at its disposal, the more commanding the position of the country wherein they operate. This brief comment is now narrowed down to the single point *that the most vital element of a true economic policy is the enlistment of the largest possible amount of labor in the ranks of productive industry.* This is the precise end of protection; and for the simple reason that it concentrates the forces of production and commerce—places the producer and consumer side by side. These two forces, as already seen, are wholly dependent one upon the other. Unless the commodities of production are devoured by commercial consumption, the forces of the former must stay their hand; and if productive industry ceases its toil, the wheels of commerce can no longer revolve. Now, if these interests are widely separated in point of locality, the agencies which will be required to furnish means of communication between them, to place the commodities of production in the possession of commerce, will be greater in number than those engaged in their immediate service; and by just the extent of the force engaged in this work of transportation, in a proportionate ratio will production be curtailed—minus the additional attendance which its increase would require—and, relatively speaking, the growth of the nation suffer delay. The point requires no further amplification. The character and rapidity of national development are defined and meas-

•

ured by the limit of producing power. This latter protection augments by reason of the fact that it gives production and consumption an immediate territorial acquaintance, and releases the forces which would otherwise be required to provide them with means of communication.

The other general allusion referred to in a prior connection is simply the statement of a self-evident truth, instead of the assertion or maintenance of an economic proposition. It is simply this: Protection, to accomplish its legitimate purpose, should be characterized by stability. It should never be vacillating. The effect of a periodical system of protection is plainly apparent. Capital and industry not only suffer by its actual changes, but the fear of its possible mutations possesses them with distrust, till they eventually refuse to prosecute the industries which the true system is designed to develop, and thereby render the institution not only mythical instead of real, but an injury instead of an aid.

This investigation of the limits of protection (and thereby of free trade) cannot receive a more forcible conclusion than to summon the words of John Stuart Mill, one of the ablest defenders of the latter doctrine, to their support. Says Mr. Mill: "The only case in which, on mere principles of political economy, protecting duties can be defensible is when they are imposed temporarily (especially in a young and rising nation) in hopes of naturalizing a foreign industry in itself perfectly suitable to the circumstances of the country. The superiority of one country over another in a branch of production often arises only from having begun it sooner. There may be no inherent advantage on the one part or disadvantage on the other, but only a present superiority of acquired skill and experience. A country which has this skill and experience yet to acquire may in other respects be better adapted to the production than those which were earlier in the field; and besides, it is a

just remark that nothing has a greater tendency to promote improvement in any branch of production than its trial under a new set of conditions. But it cannot be expected that individuals should, at their own risk, or rather to their certain loss, introduce a new manufacture and bear the burden of carrying it on until the producers have been educated up to the level of those with whom the processes are traditional. A protecting duty, continued for a reasonable time, will sometimes be the least inconvenient mode in which the nation can tax itself for the support of such an experiment."

IV. THE COLLATERAL TENDENCIES OF THE TWO INSTITUTIONS.

The foregoing comment has relied, for the most part, upon the force of mere material, pecuniary considerations to commend itself to the judgment of the reader and insure it the warrant of his affirmation. That it will receive a general indorsement is not, of course, for a moment anticipated. The subject is too abstruse to admit of the possibility of universal agreement thereon. It presents itself, however, upon other grounds than those which have just passed from consideration. It is intimately associated with the foremost aims of an intelligent civilization, and is not a mere question of material wealth. As with individuals so with nations, there is a certain status, so to speak, of *moral* strength which moneyed possessions are powerless to command. The importance thereof it is impossible to over-estimate. It is something more than a mere ally of abstract wealth in the attainment of national greatness. A just appreciation of patent facts places it far above a simple peerage with pecuniary power. Its superiority is undoubted and unimpeachable, for by virtue of its possession material greatness, with all its attendant and collateral advantages, are ever wholly at command. It is, in short, the leading

force of social science, and is hardly susceptible of definition by a single phrase. It will not answer to simply designate it by the term intelligence; neither does the word culture adequately portray its character. Its nature partakes of both, and yet the principle has a far more extended compass. If we were compelled to summon a single word to stand as an exponent of its meaning, that word would be *acquisition*. It is a status which consists in the education of both the head and the hand, the development of physical and mental strength.

The proposition resolves itself into several minor considerations, a brief investigation of one or more of which will render more apparent the force of the general principle herein maintained. And first as to its relations to manual labor. The truth is perfectly self-evident, and yet frequently lost sight of, that the power of physical as well as mental labor is measured by the extent of the education with which it has been favored. This education of the hand is of course somewhat different from that of the head. The former has but one stage—the acquisition of physical skill by simple practice, and may be called a process of training only; while the latter has two—the mental collation of abstract facts, and their application to purposes of practical import. The first is skill in creation, and may be styled an art; while the latter is skill in creation and reception as well, and may be termed a science. Yet both are education, and the extent thereof fixes the limit of the usefulness of the respective pupils.

The thought is now reduced to a closer compass, and presents the naked question of rude and skilled labor; and in this connection let it be remembered that reference is had alone to manual labor as distinguished from mental. In the opening chapter of this treatise the different stages of human progress from barbarism to civilization were traced and defined—namely, the finding, the pastoral or

nomadic, and the agricultural stages. A moment's reflection will show that the labor incident to the first two was of the rudest possible character, but with the inauguration of the agricultural period man became a producer, the dawn of civilization first lent light to his barbaric state, and he began to educate his hand in the habits of skilled labor, as seen in the pursuit of tillage. An additional advance step, it will be remembered, was here induced—namely, the acquisition of skill for the fabrication of agricultural implements.

The gist of this question of rude and skilled labor, as connected with the doctrines of protection and free trade, is now arrived at. On the supposition that a country has a large territorial area, is it policy for its people to confine their labor exclusively to its cultivation? An affirmation of the inquiry is fraught with collateral results of the gravest possible character. It amounts to a simple assertion that the education of labor shall cease; that it shall be confined within the swaddling-clothes of its natal existence; that latent talents and forces with which God had possessed a common humanity shall cease to be developed; that human progress shall stay its march of civilization. If we look for the authority by which legislation shall passively assume to set its fetters upon this natural law of advancement, the search will be poorly rewarded. It resolves itself into a quest for a law which says that man shall direct the will of God. If the Creator has endowed His creatures with inherent capacity to fill the advanced stages of social existence, we must admit that He intended such strength to be developed and employed, or else assent to the proposition that He has indulged in creation without a purpose, which is equivalent to denying His attributes of God. The employment of portions of humanity in following the plough who are by Nature fitted for the facture of wares which are demanded for the good of the community, and

whose creation is more productive of material wealth, is, to say the least, a policy of waste, if not the commission of absolute sin. The same truth is applicable to all the successive stages of human progress, whether physical or mental, and its further extension is wholly unnecessary.

The reasoning is not to be confined to the solitary instances of agriculture and manufactures, as above stated, and yet the tendencies for good or evil in this direction alone are almost boundless. The pursuit of agriculture, to the comparative or total exclusion of other industrial enterprises, bears directly upon the extent and rapidity with which a country is peopled. The statement is warranted by all past history, and its truthfulness, indeed, is self-evident, that purely agricultural countries are not only sparsely settled, but also in a very isolated manner. The very nature of the vocation renders an opposite condition of things entirely impossible. The status of our Southern country pertinently illustrates the position. The South has always been, in a comparative degree, exclusively engaged in the production of a few agricultural staples, and with but a very few exceptions south of the forty-fifth parallel of latitude its people are not massed in cities or towns of above from four to ten thousand inhabitants. Its aggregate population, moreover, bears no relative proportion to that of the North and West. The constant increase in the number of our inhabitants as a nation has always been principally in the latter sections. It cannot but be plain to any reflecting mind that incentives to an increase of population, particularly in the case of nations with a wide expanse of territory, constitute the direct key to national development. The number of people in any country measures the extent of its producing power, and the latter, as shown in a prior connection, is one of the principal elements of national wealth. Moreover, the perfection of agricultural enterprises is wholly dependent upon the extent to which land is sub-

divided among different owners or occupants. The more minute the division, the more perfect the tillage, and consequently the greater the production. Admit, for the moment, that agricultural countries should devote themselves exclusively, in a relative sense, to the pursuits of tillage, and the end cannot be so fully consummated, the amount of agricultural products cannot be so greatly increased, as in furnishing such incentives for the rapid increase of population as the establishment of manufactures provides, thereby restricting the extent of territory occupied by separate individuals, perfecting the method of cultivation and augmenting the harvest returns.

There is another aspect to this question of cities and villages as it inferentially appears in the preceding comment. It is the plea for culture. "God made the country, and man made the town," is a somewhat worn and hackneyed apothegm. The direct assertion of the secondary statement is as faulty and indefensible as the inference proposed by the entire remark, that the former abounds in the greatest benefits. We say *benefits*, and not *comforts*, although the last as well as the first may perhaps be claimed by the town with a right equal to that of the country. This, however, is immaterial to the point at issue. By *benefits*, moreover, is intended those both personal and national. The springs of civilization are rooted in education; and by the latter we mean such education of both the head and the hand as was in a prior connection defined by the use of the term *acquisition*; or, in other words, manual skill and mental culture. In these are founded all the forces of science and art which give the world its advantages of invention, discovery and the general adaptation of natural means for desired ends; in short, national advancement. This education, acquisition, relatively speaking, is incident to our cities alone. In them naturally gathers the mind of the people, and in them are the perfect facilities

for the education and culture which advance the cause of civilization and human progress alone obtained. The neglect in a people to diversify their industries to the greatest possible extent, and thereby render the congregation of its inhabitants in large cities impossible, is simply to record a protest against their education on the one hand, and to reverse the wheels of civilization on the other. This argument must not be construed into a disparagement of populating the country. Such a position would be simply absurd. The country has its duties and responsibilities no less grave and weighty than those of the town. The two go hand in hand, and the permanent growth of one to the prejudice of the other is something never to be feared. That is a matter controlled entirely by the force of natural law, and needs no conservator whatever. The undue desertion of the country for the town increases the advantages of the former and diminishes those of the latter, and *vice versa*. These extraordinary advantages will not long be left to the few. The law of self-interest is powerful and supreme, and in the case above noted the outgoing march will meet the incoming train.

This immediate discussion points to certain direct conclusions, after briefly noticing the more important of which the present sub-subject will be dismissed. The first is one which inferentially has received a detailed exposition in a prior connection, and in this instance, consequently, will simply receive a mention. Reference is had to the relation of the foregoing truths to the topic of production. Production is, for the most part, wholly dependent upon the extent of the education of a people who essay it—upon mental and manual acquisition. One of the chief ends of the adoption of the policy foreshadowed in the present investigation is to augment the facilities of such education, and thereby increase production and enhance the general welfare. The operation of the forces herein contended for

eventuates in precisely these results, as well as the betterment of individual condition.

A second conclusion to which we are inevitably drawn by the past argument is closely allied to the foregoing: it may be regarded, indeed, as a logical sequence thereof. It is the simple alternative of progress or decay. There is no period of repose in the life of civilization. It is either an advance or a retrograde. The moment a nation ceases to educate its hand in skill and its mind in knowledge, production is not only no longer extended, but diminished. It cannot be otherwise. Human achievements, of whatever sort, result from the employment of human force. Stop the supply of the latter, fail to fill the vacancies effected by time and death, and decline is inevitable. We are thus brought face to face with the choice of civilization on the one hand, and, if not absolute barbarism, primitive nomadism on the other. This, indeed, although seemingly collateral, is the real question involved in the rival doctrines of protection and free trade. Its importance cannot be lost sight of by slight. By the side of it the mere matter of material wealth—and this, as already shown, is wholly dependent thereon—is of little comparative importance. Moneyed possessions are entirely incident to the education of mental and manual strength. Their loss, at the utmost, carries in the downfall none but the former owners and those who were pecuniarily interested in their success; but a reflux in the tide of civilization, however local, makes its influence felt in every quarter of Christendom. In that work there is, *nolens volens*, a universal partnership of the human brotherhood, which includes every race, people and nationality, and the misfortune of a single member is the woe of all concerned.

The collateral tendency of the two institutions of protection and free trade, as above defined, raises a question of the most momentous character. It cannot fail not only to

engross the attention of every philosophic mind, but it also precludes the possibility of silence among the supporters of Christianity in general. It resolves itself into the simple alternative of whether particular countries, and consequently the world, shall still join in the onward march of human progress, educate their intellect, perfect their skill in productive labor, develop their natural resources and unfold the mysteries of science, or whether they shall, perhaps slowly yet surely, return to the enervating influences of a pastoral life and the still more aimless pursuits of the chase. Protection, of course, does not necessarily attach to *all* countries, nor to *any* country, except under certain conditions. Those conditions have been fully and fairly defined in a prior connection. Repetition thereof will not be made, but the same must be remembered to prevent a misconstruction of the utterance that both in its direct and collateral tendencies the development of latent, hidden resources, the increase of the material wealth of both the nation and the individual, the substitution of skilled for rude labor, the education of the intellect, the exploration of science, the perfection and ennoblement of art, the provision of motor-power for the cause of civilization, and the advancement of a common Christianity, are the end and aim of that system of economic law which, as it opposes progress to decay, has been so fittingly styled protection.

V. THE PROPER POLICY FOR THE UNITED STATES.

The discussion of this sub-subject consists in a simple application of the principles hereinbefore set forth. It is most appropriately introduced by a brief statement of the absolute and relative position of this country. In reference to the first, as connected with the intelligence of its inhabitants, it possesses the largest extent of territory of any nation upon the face of the earth. But about one-fourth of this entire domain has been developed by the hand of in-

dustry. The balance of it, comparatively speaking, is an utter stranger to everything but the annual visit of the seasons and the presence of the herds which wildly roam over its luxuriant surface. Unknown to all but the curious traveler, and the savage who has sought to divorce himself from civilization in its solitude, it sleeps, as left by the hand of Nature, in total ignorance of the existence of man. The natural resources of this vast territorial area are of the most diversified character. Its soil has capacity for the unrivaled production of certain agricultural staples; metallic ores of almost every description lie hid beneath its bosom; forests of timber shoot heavenward from its mountains; indigenous fruits voluntarily ripen in its sunny valleys; boisterous brooks waste their strength in dancing among its hills; and mighty rivers on all sides force an outlet to the different gates of the sea. We are a people, moreover, who assume to govern ourselves. Our form of government and our institutions are wholly and unqualifiedly republican. Relative liberty is granted to all, and neither the mind nor the body is subjected to slavery. Vocations are in no respect exclusive. Pursuits which are lawful to one the masses may legitimately follow, and the means of accession thereto are uniform and easily available. Our only title of nobility is intelligence, and the avenues to personal distinction and honor are open to any who have the ability and diligence to essay their passage. This universality of character and opportunity, coupled with the mobility of our institutions, attracts to our shores the oppressed and unfortunate of every race and country. The name of America, indeed, is a magnet which draws to itself the heterogeneous and penniless masses of the European and of Eastern countries. Our population, by reason thereof, is increasing with unprecedented rapidity, and the new accessions are of a character who must live by the returns of labor and not of capital. Our country, moreover,

is still in its infancy, and is characterized with much of the weakness which is not incident to manhood. The education of our labor is not yet perfected, our intellect is not yet matured, and our explorations of science and appropriations of art are not fully extended.

Thus much for our absolute status. In reference to our relative condition, we are placed in competition, in the commercial world, with rivals who were five hundred years old at the time of our birth—with rivals who have availed themselves of the advantages of this long experience, and whose productive sinews are toughened by the uses and hardships of checkered age. We have just emerged, moreover, from the convulsions and horrors of a civil war more stupendous in proportions than any which exists in the memory of man. This terrible struggle cost us, as a whole people, to say nothing of life, nearly ten thousand millions of treasure. Our obligations for nearly two thousand five hundred millions are still in circulation, and in a great measure in the hands of foreign capitalists. Our traditional policy refutes the idea of a permanent public debt, and our national prosperity renders the payment of the present one imperative.

Considering our immense landed possessions, the argument of free trade points directly, comparatively speaking, to the exclusive pursuit of agriculture by the people of the United States. There is no escape from this conclusion. With our markets open to foreign venders of factured wares, any attempt at production of the same on our part is useless, for the superior facilities of our competitors, resulting from the element of age, enable them to undersell us and drive our factured products from existence. The same is true, in every respect, in reference to our mining industries. Our labor is still educating itself in the skill requisite to follow these pursuits as advantageously as that of older rivals, which fact, coupled with the initiatory expense attendant upon the inauguration of any enterprise

whatever, puts an effectual check upon the working of our raw mineral wealth into salable commodities with the system of free trade in force. The truth of the statement cannot be denied. In respect to origin, there are only three kinds of raw material—namely, the products of land, mines and fisheries. A reign of free trade restricts our producing power within the limits of the first and last, and principally those of the former. The result of thus confining our labor within the narrow compass of agricultural industry needs no description. The same, although inferentially yet fully, appeared in the discussion of the next preceding sub-subject. Further statement thereof will not be suffered. Suffice it to say, our country would be made up of small villages and towns to the exclusion of cities, our education of both labor and intellect would deteriorate, and we should slowly yet fatally recede to the primordial condition of the pastoral tribes of the Eastern World.

There is an argument suggested in this connection in favor of free trade which, although indefensible, is sufficiently specious to provoke a reply. It is this. The supporters of the theory urge that as the adoption of their system would give us both cheaper raw material and factured goods, the less cost of the former and the diminution of living expenses, with its consequent reduction of the price of labor induced by the latter, would enable us to successfully compete with our foreign rivals in manufacturing pursuits; or, in other words, the reduction in the cost of the component parts of factured wares, labor and raw material, under a free trade system, would equalize our facturing capacity with that of other countries. Not so. The claimants omit one very important element from the discussion—the difference between the *abstract* price of American and foreign labor. The question presents the simple alternative of the degradation or ennoblement of our laboring classes. England feeds her workmen upon

black bread and sour beer, and her pauper list not only numbers a million and a half of souls, but is constantly on the increase. The United States provide their laboring classes with wholesome food, proper covering, suitable shelter and means to educate both themselves and their children, and pauperism fails of annual growth. And instead of receding *from* that line of action, they propose to advance *beyond* it, believing not only that their own material and national greatness is wrapped in the policy, but also the cause of civilization and Christianity in general. This difference between the abstract price of foreign and American labor is too great to be overcome by the adoption of free trade. The average of such difference, making due allowance for the cheapness of living expenses in Europe as compared with America, is fully thirty, and the average reduction to us in the cost of labor and raw material incident to a free trade policy ranges only from ten to twenty per cent.

The fact is notorious to any intelligent mind that in advocating a free trade policy the case of England is cited as indisputable authority to support the plea. That country is our principal competitor in the commercial world, and as the citation above named is pertinent, so may the status and exigencies of the two nations be very properly contrasted. The territorial extent of England, as compared with that of the United States, is meagre in the extreme. The waters of the ocean wash every rood of her outer borders, and fourteen hours' land carriage will place the products of her most interior industry upon her docks for shipment. A landed aristocracy is one of the pet features of her governmental policy. Fifty thousand individuals own her entire territory in fee simple, and the absolute (or even qualified) ownership of land—yea more, its occupancy even—by any of her laboring classes is nothing less than an anomaly. This small extent of area, coupled with the infrequency of

its subdivision, has driven her producing power almost exclusively to the pursuit of manufactures. Her government is a constitutional monarchy, and although, in some respects, one of the most perfect, both in form and theory, which the experience of past ages has ever suggested, it denies, to a very great extent, the advancement of her lower and middle classes. She depends partially upon the existence of a large public debt to secure the continuance of her present form of government. For five hundred years has she profited by the results of invention and the explorations of science; the education of her labor is the most perfect of any in Christendom, and the same, with the exception of Germany, is true of her intellect. From 1651 to 1845 she shielded her industrial pursuits with the most rigid system of protection which the history of economic legislation has ever presented, and not until she had so perfected her facilities in that direction that she had nothing to fear from unrestricted traffic did she adopt the opposing policy of free trade. England stands, to-day, the oldest and most emphatic exponent of the work of protection throughout the world.

Leaving this general, inferential contrast, a more direct one will now be considered. The producing power of the United States is in a great measure, by reason of its vast territorial resources, devoted to the production of raw material. That of England, on the other hand, owing to its restricted area, is almost exclusively directed to the facture of wares. Those of our raw products for which England is a customer are corn, cotton and tobacco, while, by virtue of the non-development of our facturing power, we purchase the factured goods of England in return. Attention is drawn to this point for the purpose of refuting an argument of the free trade theorists that the absence of this policy restricts our exportation of these staples. The position was shown to be indefensible by an examination of

general principles in the discussion of the third sub-subject of this chapter. The main ground will not be re-examined, showing that protection does not reduce the aggregate amount of exports, but the present comment will be confined to the effect of the policy upon the sale of the three products above mentioned. They constitute, it is true, a very large portion of our exportable commodities, and the topic is consequently an important one. Now, corn, cotton and tobacco, at least the two former, the United States, on account of territorial and climatic status, can produce with greater facility and in greater abundance than any other country. The cotton crop of the United States, in fact, is two-thirds of that of the entire world. Britain, however, comparatively speaking, in the absence of the peculiar status above stated, can produce them only in a very limited degree. She *must* come to us, either directly or indirectly, for these staples, whether we govern ourselves by protection or free trade. Not so in reference to the factured wares we purchase of England. We have every latent facility for this production which England has, and it only requires development to render us wholly independent of her in respect to our supply therewith. We may by a system of protection accomplish that result, and not for a moment jeopardize the extent of our export trade in the products above named. Natural laws render the opposite results entirely impossible, and make us masters of the situation.

It is directly at this point that not only the reason of England's advocacy of free trade upon general principles, but also that of her intense desire to see it adopted in this and other countries, is made apparent. Her restricted territorial area has driven her almost exclusively to facturing pursuits, and she has naturally enough aimed to distance all competitors therein. For the ^{advancement} attainment of this end she has not only perfected the elevation of her labor by three hundred years of experience and two hundred years

of rigid protection, but also reduced the cost of her labor to the lowest possible minimum in the criminally scanty wages she pays her laboring classes. By these expedients she is enabled to place factured goods in the market at a lower price than any other country. She has nothing to fear from competition, and therefore argues free trade for her economic policy; she desires to sell all the goods she can, and therefore advocates the system as the only proper policy for other countries. Nations, like individuals, adopt particular expedients for their own and not for others' good. There is no less selfishness in public than in private policy. England advocates free trade as the only proper economic system for *universal* adoption simply because, *under existing circumstances*, it is the most advantageous for her to follow, and not because she ever has shown or can show that it is best and wisest for all Christendom. The attempt to make the case of England a criterion for other countries, between her and whom there is not the slightest analogy in respect to age, education, territorial area and treatment of the laboring classes, is an abuse of logic and an insult to reason.

There is a collateral fact suggested at this juncture which is peculiarly pertinent to the present discussion. England assigns the wretched condition of her laboring classes to *over-population*, if such a term may be suffered. It is the Malthusian argument that the world, in time, will be peopled beyond its capacity—that God is going to glut His creation with humanity—and is very acceptable to England because it absolves her from a terrible responsibility. There is, however, a reason for the deplorable status of her mill-operatives behind all this which is less insulting to Omnipotence and more easy of appreciation. England has aimed not only to control the commerce, but also to make her facturing marts the exclusive market of the world for factured wares. Down to the ^{trafficking} ~~trading~~ ^{epoch} ~~epoch~~ of the present century, or about the time when she abandoned protection (1845), her ambi-

tion was successful, for not till then did the Western World overtake her in the race of civilization. It was simply to distance this dangerous rival that she invited Christendom to the feast of unrestricted traffic and removed the customs barriers from her ports of entry. For reasons before stated she had nothing to fear from competition, and the prospective curtailment of her list of customers urged her not only to adopt the policy for herself as an attraction to her selling buyers, but to advocate it to her neighbors, that in their ports she might sell her goods. The motor-power which enabled England to still maintain her ascendancy in 1845 as the supply-store of the world by the adoption of free trade, *was the continued degradation of her labor*. The success of free trade with England—if indeed it may be called a success—is wholly based upon the miserable poverty of her lower laboring classes; and herein, rather than in the theory of Malthus, lies the secret of their misfortunes. It is a useless battle. England struggles not against the power and skill of human competition, but against the progress of civilization and the force of natural law. She can be a partial but not an exclusive supply-store for factured wares. The fates are against her, and her facturing industries cannot much longer increase their scope, if they can even maintain their present status. *The magnitude of any enterprise is measured by the versatility of others which surround it, and this last, in a great degree, by immediate territorial area*. Factures of hand or machinery will best flourish by the side of extended agriculture, and *vice versa*. The one makes a market for the other, and the greater the extent of territory, if characterized with natural advantages and the same are properly developed, the greater the prosperity of both; and for the same reason the more versatile the pursuits the more extended their compass. England, consequently, must not assume an ability to supply the world with factured goods. Her immediate limited area

renders it impossible, and the *ultimate* relative extent of her capacity in this direction will be measured by the degree to which the United States and other countries possessed of similar natural advantages develop and perfect the same. There is room and opportunity for England's starving poor in other localities, and therein they will look in the future for relief.

There is another point to be considered before this argument of contrast is dismissed, and it is the vehicle of a fact which throws around English industry the shield of protection in as great a degree as though a protective enactment occupied a place upon England's statute-book. It is the difference which exists in the cost of transportation of the peculiar products of the respective countries. Remembering that the cost of transportation is a component part of the cost of commodities to their vender, and consequently a factor of the market price to the buyer, the advantage of England in this respect will be made clearly apparent by means of a simple statement of patent facts. The exports of the United States, as before remarked, consist, for the most part, of raw material which is not only bulky, but, comparatively speaking, of small moneyed value. Our territory is so vast in extent that these exports are placed upon our docks for shipment only by means of a long and expensive land-carriage, and their enormous bulk renders such land- and subsequent water-carriage extremely expensive. The cost of transportation of our exports to European ports, in short, forms, upon an average, about fifty per cent. of their market price. England, on the other hand, exports, relatively speaking, scarcely anything but factured goods, which are not only capable of shipment in a very small compass, but are possessed of great moneyed value. Her facturing marts, moreover, are, at the farthest, but a few hours distant from her ocean-docks, so that the cost of land-carriage for her exports is next to nothing.

The cost of transportation of her exported commodities, in fact, is not, upon an average, above ten per cent. of their actual value. The force of the foregoing may perhaps be better appreciated by a statement of the fact that it costs as much to place a bushel of American corn, worth fifty cents, upon the docks of Liverpool, as it does a yard of English broadcloth, worth five dollars, upon the wharf at New York. It is impossible for England to secure a system of protection more perfect, so far as the United States are concerned, than is here accorded her.

To conclude this contrast of the status of the two countries, the attempt to justify free trade as the proper economic policy for the United States by analogous reasoning from an English stand-point is wholly ephemeral. There is not, on the whole, the slightest analogy between their respective conditions. Our status is much more like that of India, even, than of England or Belgium, to whom the supporters of free trade are so prone to point for proof of its success. If unrestricted traffic should be adopted as the immediate policy of our Government, and the same adhered to, we should lapse into the almost exclusive pursuit of tillage, and place the followers thereof upon the same deplorable basis as the laboring classes of Great Britain. Ireland, indeed, owes her past distress of famines almost wholly to the free trade laws of the English realm. The ridiculously insignificant remuneration which the labor of her peasantry received, induced by the free trade policy of England, and not a scarcity of provisions, was the cause of every famine which has visited that unhappy people. In every instance thereof, the cereal markets of this country were fully stocked for foreign buyers, and the charity of our people made them accessible without money and without price.

There are three other points worthy of a passing notice, at least, before the present chapter shall be concluded. And, first, the labor of a nation which has been educated

above the mere vocation of agricultural pursuits—which end is gained by protection—is never compelled to raise the mortifying flag of pauperism and confess its inability to take care of itself. Skilled labor is always independent. Somewhere in the world it is always in demand, and can ever find employment. History furnishes many forcible examples of the truth of the foregoing, and that which Lucca records can never be cited too often. In 1310 a change of governmental policy exiled nine hundred families therefrom. In this unhappy number thirty-one families were skilled in the art of silk manufacture, and prevailed upon the authorities of Venice to allow them to remain therein for the purpose of establishing that industry under government auspices. Second, it is the interest, and consequently the duty, of every country to approximate as closely as possible to a state of perfect independence of other nations. In countries of large territorial area and diversified natural advantages this is peculiarly advantageous, for in the event of war such a status affords a moral power which the artificial strength of armies and navies is powerless to supply. And, third (to be more fully noticed in the next succeeding chapter), we have a debt to pay, and only either by a protective tariff or internal taxes are the means to be possessed for its cancellation.

As announced in the outset, the discussion embraced by the present chapter has only dealt with general principles, and the application thereof to the peculiar exigencies of this country. It was not intended to grasp the specific instances to which, for the welfare of the United States, one or the other of the opposing doctrines should attach. That is the work of the next succeeding chapter.

The conclusions which are suggested by the foregoing investigation are seemingly indisputable. With our large extent of territory, rich in its undeveloped and unapplied resources of hidden wealth and water-power, coupled, in all

cases, with the interest, and in most instances the necessity, of still further perfecting the education of our labor—of maintaining, if not advancing, the present status of our laboring classes—of augmenting the scope of our producing power—of keeping open the avenues of industry in as many directions as possible, so that our annual tide of immigration shall become an assistance and not a burden—of fortifying ourselves against the chances and contingencies of war, and of redeeming our present financial obligations,—the wisest and most expedient economic policy for this country to pursue until it has reached a period of mature age, whether it be twenty or fifty years distant, is to *equalize* with that of older rivals the status of those of our industries which natural or artificial causes have placed in unequal competition therewith, by giving them both the defence and assistance of a temperate, uniform system of protection. The contrary would not only be a waste of inherent strength, but a weight upon the progress of civilization.

CHAPTER II.

TARIFFS.

The Scope of the Discussion—It will not Descend to Details, but state Principles by which the Same may be Reached—History of Tariff Legislation in the United States—The Tariff of 1789—A Protective Measure—Its Cause and Origin—Amendments thereof—Alexander Hamilton and James Madison upon the Policy—The Tariff of 1816—Induced by the Changed Status of Europe and America—Inadequate—The General Distress which followed—The Tariff of 1824—Strongly Protective—Its Cause and Origin—A Success—Clay and Webster the Master-spirits of the Conflict—The Claim of Locality—The Tariff of 1828—A Modification of the one of 1824—The Compromise Tariff of 1833—Protection Abandoned—Its Cause and Origin—South Carolina—Clay the Mover of the Scheme—Webster its Opponent—Positions of the two Reversed—From 1833 to 1842

Free Trade and Disaster Ruled the Country—The Tariff of 1842—Protection Resumed—Modified in 1846—Prosperity Followed—The Tariff of 1857—Protection again Abandoned—The Forerunner of General Distress—The Tariff of 1861—Protection Reinstated—Why?—Protection for the United States Defended—Our Import and Export Trade Reviewed—The Results of Tariff Legislation in this Country—The Case of Labor, Agriculture and Cotton—The Classes of Articles to which a Protective Tariff should Attach—The Principle Stated which here Governs—The Case of Raw Materials—Iron requires Protection—Coal and Wool do not—Lumber for Special Reasons should not have it—The Extent to which a Protective Impost should be Laid—The Same fully examined.

THE task assigned to the present chapter will be confined within very narrow limits. Extended discussion upon the above-entitled subject, in the light of the next preceding one, is indeed wholly unnecessary. The examination of the joint topic of Protection and Free Trade was based entirely upon general principles, and concluded with an exposition of the proper policy for the United States to pursue. The work of this immediate investigation is to define the limits of the application of such a policy—to state in detail the objects upon which it should lay its hand. The topics of both chapters are mere subdivisions of one general subject. They were separated by the author in his treatment thereof for the purpose of avoiding confusion, and of obtaining *in toto* a clear understanding of the fundamental principles of protection and free trade before essaying to apply these laws for the attainment of practical ends. It asserts itself to be the better method, for the reasons—if we may reduce them to a close and somewhat metaphorical expression—that theory properly comes before practice, science before art, and that, the former having been mastered, the latter will require but a little time for the purpose of making our acquaintance.

As to the exact scope of the present chapter, the reader must not, in the outset, be misled by the prior remark that

its work "is to define the limit of the application of such a policy, to state in detail the objects upon which it should lay its hand." This proposition must not be assumed to convey the intendment that all the objects upon which a tariff should seize, together with the exact extent to which it should essay to control them, will be separately stated in this discussion. Such a course would be the draft of a bill for the action of legislation, and not the elucidation of principles by which legislation may be guided. It is the latter, and not the former, which alone is here intended, or even necessary; and this end will be accomplished by a *statement of the classes of objects to which a tariff should properly attach, coupled with a general rule to serve as an index of the precise limit to which it should operate thereon.* There is a maxim of law no less salutary for economic than legal discussion—namely, *Quod est certum certum potest*—"that is certain which may be rendered certain," that is, by mere ministerial as distinguished from discretionary action. It is by this rule, owing to the fullness of the next preceding chapter, that we shall in this instance more than usually adhere.

With these preliminary observations the main topic will now be proceeded with in the following order:

- I. History of Tariff Legislation in this Country;
- II. The Classes of Articles to which a Tariff should Attach;
- III. The Extent to which a Protective Impost should be Laid.

I. HISTORY OF TARIFF LEGISLATION IN THIS COUNTRY.

The object of this immediate comment is twofold—namely, a concise, chronological statement of the several tariff measures which have been adopted by the United States, and the demonstration that such measures have always proved a benefit to the community—that their ab-

sence has ever been the concomitant of extended and almost universal distress. For this purpose a running record, so to speak, will first be made of the economic legislation of the country in this direction, accompanied by general statements of its condition attendant upon such a course; after which a brief and somewhat detailed review of intermediate and collateral events connected with our history and incident to the respective tariff measures will be made, to substantiate the claim above advanced, that protection has always promoted the welfare of the American republic.

Within three days after the assembling of the first Congress of the United States the discussion of the proper economic policy for the Government was inaugurated, and has ever since been continued. The total disagreement of the most eminent minds of the country thereon, through every stage of our national existence, pointedly sustains the position hereinbefore advanced, that Political Ecopomy is not a science—that it is wholly dependent upon the peculiar conditions of every state or nation. The discussion above noted eventuated in the adoption (July 4, 1789) of the first tariff act placed upon the statute-book of the then infant republic. It bears the following preamble: “Whereas, it is necessary for the support of the Government, for the discharge of the debts of the United States and the encouragement and protection of manufactures that duties be laid,” etc. The origin of this species of legislation is unclouded with mystery. It had its birth in the status of things consequent upon the stern fortunes of war. The American Revolution had barred the people of the Colonies from making further imports from the mother-country of many of the necessities of their peculiar life, such as cloths, utensils of agriculture and mechanics, etc. etc., and dire necessity had forced their facture upon themselves. Throughout nearly all of the few pioneer States

which then nestled upon the Atlantic seaboard embryo works for the facture of various wares like those above named had been established. The war concluded and peace restored, the further existence of these youthful industries was unqualifiedly doomed by the prospective renewal of extended shipments to our ports of foreign wares similar to those here factured at a lower price. The inevitable result plainly foreshadowed itself—the forced pursuance of agriculture by the masses, and the consequent stay of national advancement. To avert this calamity, the act above mentioned was devised, but not without serious and able opposition. Mr. Hartley of Pennsylvania was its chief champion, and Mr. Madison of Virginia its strong antagonist. The reason is obvious. The latter State had become the principal mart for the exportation of tobacco, and protested against paying the former more for factured wares than they could be purchased for in Europe. The argument, not only in itself untrue, was local and not national, and the comparative irrelevancy of such local claims, for the most part, to national interests, will be seen in the changed position of Mr. Madison in 1828, when, by reason of the changed local status of the interests of his State, he supported the tariff bill of that year. The act above named was extended, both in the rates of duties which it imposed and the number of articles upon which an impost was laid, August 10, 1790, and March 3, 1791. The effect of these several acts of legislation upon the material prosperity of the country was quickly visible. The most satisfactory results followed their adoption. Not only the decline in our facturing industries was changed to a rapid and healthful growth, but the more general pursuits of commerce and agriculture were rapidly advanced by force of the diversified interests which were generated by these economic measures of 1789, '90 and '91.

With various but not, in many instances, material modi-

fications, instituted in 1792, '94, '95, '97 and 1800, '04, '07 and '08, this initiatory policy of protection was pursued. Both its inception and continuance were due, in a great measure, to Alexander Hamilton, who, as Secretary of the Treasury, bent the whole of his powerful influence in this direction, advocating the sanction of the policy by Congress with all the skill, learning and practical logic of his ever-inimitable pen. His official report of December, 1791, largely devoted to a discussion of the feasibility of fostering our industrial interests by a protective policy, has not only always been cited by the supporters of protection as one of their most formidable authorities, but stands to-day wholly unanswered by its antagonists. It will ever retain a place in the annals of American history as a production of the most peerless intellect and consummate statesman which the iron struggle of the Revolution gave to America and the world.

The rates of duties imposed by these several tariff acts were not, in themselves, in consideration of the tremendous odds against which our infant industries were arrayed, sufficiently high to give them adequate protection and defence. Down to the year 1815, however, other causes had aided them in the maintenance of the unequal conflict. The acts of 1790-91 lent sufficient encouragement and aid to enable them to cope with the superior strength of England while she was recovering from the war of the Revolution, but in the absence of other agencies they would soon have needed reinforcement by additional legislation. Collateral events, however, rendered such legislation, for the time, unnecessary. In 1793, Europe was precipitated into a struggle which two decades were alone to close. Napoleon at that time not only invited, but compelled, both England and the Continent to lock their forces with France in a conflict whose final hour the cannon of Waterloo were alone to toll. During these twenty years, in which this second Alexander commanded every effort of the allied forces to keep him

from carrying his eagles into every stronghold of their respective domains, consequent events shielded the youthful industries of the United States from decline and death. In 1797 the Bank of England suspended specie payments for twenty years, and the industries of the realm, comparatively speaking, were paralyzed and destroyed. The British Orders in Council in 1806, and Napoleon's Berlin and Milan Decrees of 1807, moreover, whereby the ports of the contending forces were declared under a perpetual blockade, together with our embargo laid upon shipping in 1807, and our non-intercourse measures of 1809—both of which were induced by European confiscation of our commerce under the decrees above mentioned, supplemented by Napoleon's Rambouillet Decree in 1810, in retaliation of the last named—all conspired to greatly enhance the price of foreign products, and leave American producers almost the exclusive sellers in our markets. From 1812 to 1815, again, so far as our economic status was concerned, our history also repeated itself, so that the tariff acts of these years and of 1813 were fully enforced by the effects of the second war between England and the United States in placing our industries in equal competition, at least, with those of foreign countries.

At this point, however, other and entirely different exigencies presented themselves. The exile of the Corsican to St. Helena had given Europe rest from its long-protracted conflict; the Treaty of Ghent, in 1815, had set its seal upon the second struggle between Great Britain and the United States; and European industry shifted from the creation of supplies of war to catering for the demands of peace. The prospective result was foreshadowed by some of the legislators of that period, the necessity of additional legislation urged upon Congress, and the tariff act of April 27, 1816, was adopted. The original bill was reported by Mr. Lowndes, and at this juncture the second race of America's

statesmen, if we may so term them, first took a decided stand upon the economic question of the republic. Henry Clay, with Mr. Lowndes and John C. Calhoun, championed a rigid system of protection, while Daniel Webster and John Randolph arrayed themselves against it. The status of these intellectual giants upon this measure again illustrates the comparative irrelevancy of local claims, in most instances, to national welfare. The cotton interest then rendered the South a unit in the support of protection by reason of the existing impost system of Great Britain, but failed to elicit the sympathy of the States upon the seaboard who had no direct interest in the growth of this staple. A little farther on, and the position of some of these combatants will be radically changed by reason of the same local pressure. This legislative combat of 1816 was an unequal struggle. The ponderous eloquence of Webster and incisive logic of Randolph trenched not a little upon the scope of the original bill, and an intermediate and wholly inadequate measure, in consideration of the changed condition of Europe above noted, was adopted. The result was inevitable. As soon as the European workshops fully resumed their operations as before the war, their superior facilities enabled them to lay their wares upon our docks at a price considerably below that at which our own factories could produce them, and the country was glutted with foreign goods. An attempt was made to modify the act of 1816 in 1819, but was unsuccessful; and from that period to 1824 the prosperity of the country waned with every successive year, until, at the time last above named, the general condition of the nation was so deplorable in the extreme—unequaled in severity by any of its civil experience since the close of the Revolution—that Congress was compelled not only to listen but to accede to the clamor of the people for relief. Hamilton's report of 1791 was exhumed, and the tariff act of 1824 was adopted.

Fully three months were consumed in the discussion of this measure, and the debates were some of the ablest which have ever emanated from the halls of Congress. The master-spirits of the republic, Clay and Webster, were again pitted against each other in a second conflict over the expediency of protection. To quote the words of an eloquent historian, "Mr. Clay was the Ajax Telamon of the bill, ably supported by Mr. Tod and many others on different points; but Hector's were not wanting on the other side to contest the ground inch by inch."

It is again noticeable in this connection how the claims of locality will prejudice the most peerless mind against the general welfare. Not only the agricultural but also the manufacturing States were almost a unit in the support of the measure, but the navigating and fishing States were equally zealous for its defeat. Of the former were Rhode Island, Connecticut, Vermont, New York, New Jersey, Pennsylvania, Delaware, Kentucky, Ohio, Indiana, Illinois, Missouri, Maryland, Tennessee and Louisiana; and of the latter, Maine, New Hampshire and Massachusetts. The editor of *Niles's Register* justly remarks in this connection that "the unanimity of the navigating States against the wishes of the middle grain-growing States will surprise those who recollect that the former were indebted to the latter for the passage of every law that protected and established their navigation."

Like the one of 1816, this conflict of those giant intellects was an unequal struggle, but the position of the combatants, in point of strength, was reversed. The clear, resplendent eloquence of Webster was more than a match for the magnetic thrusts of Clay, but the almost universal distress of the people pleaded with greater force than even New England's "Hector," and the gallant Kentuckian led his forces triumphant from the field.

The bill was not, in all respects, evenly balanced, nor

indeed, in consideration of the hotly-contested battle of which it was the subject, was such an expectation warranted. Its defects, however, were partially remedied in 1828, and from 1824 to 1833 the country was under the régime of a rigid policy of protection. The principal of the defects above noticed was the exclusion from the free list of many articles, such as tea and coffee, which this country did not nor could not produce. But in 1832 the free list was extended to nearly the proper point, and the objectionable features of the former law wellnigh removed. And in this interval (1824 to 1833) the expectations of the movers of the policy were fully substantiated. The general prosperity of the people, as seen immediately prior to 1816, was fully restored, and no particular locality had any extended reason to demand a radical change.

After the act of 1828 this narrative, with the exception of the instances in the next preceding paragraph, omits any mention of the enactment of mere periodical amendments to original measures of impost, and only considers the latter, which alone have worked any marked changes, either directly or collaterally, upon the general interests of the nation. And this brings our history to the tariff act of 1833, otherwise known as the "Compromise Act."

This measure abandoned the policy of protection *in prospectu* by providing for a steady, periodical reduction of duties until the then existing system should be wellnigh abolished. The scheme was projected by Henry Clay, and had its origin in facts of peculiar interest. Since 1824, when they so stoutly opposed the tariff act of that year by virtue of the anticipation that it would retard their navigation interests, the States of the Northern seaboard had joined the lists of the Middle States in the establishment of facturing industries. The West was yet in its infancy, so far as influence in the halls of Congress was concerned at least, but the South, then almost exclusively given to the production of

cotton for exportation, entered loud and frequent protests against a system which, as it alleged, by enhancing the cost of a great number of its articles of consumption, taxed its people for the benefit of the other sections above named. The States most prominent in these demonstrations of discontent were South Carolina, Georgia, Alabama and Virginia. The first named, indeed, had gone to the extent of holding a State convention in the autumn of 1832, and passed an ordinance, commonly known as the "Nullification" scheme, whereby, after February of the next ensuing year, the laws of the General Government for the collection of imposts were to be wholly disregarded, and its officers, if need be, opposed by force.

To avert the seemingly impending conflict, Mr. Clay introduced his compromise bill above noticed. History, on the one hand, accuses its author of a motive to popularize himself as a candidate for the next succeeding presidency, and on the other accords him a sincere desire to alleviate the growing discontent. Be this as it may, it proved a most unwise expedient, and in the light of the Kentuckian's clear appreciation of the needs of the country in 1824 it is difficult to see how he should have instituted the tariff act of 1833. The "Ajax" and the "Hector" of Congress were again involved in this struggle of protection, but their positions were directly reversed from 1828. Mr. Webster, with unanswerable logic, opposed the scheme, but the importunities of Clay to avoid the clash of State and national authority prevailed, the measure was passed, protection abandoned, and the interests of the many deserted at the command of the few.

From 1833 till 1842, in pursuance of the foregoing facts, free trade, comparatively speaking, had exclusive and unremitting sway in the United States. The line of disasters which followed its adoption in such quick succession as to overreach each other in their march of conquest against the

general weal, pointed so clearly to this change of policy as their legitimate parent that the wheels of government, in this respect, were again reversed, and the year last named recorded a return to protection. The tariff act of 1842 was long, ably and dispassionately considered, and discovered none of the glaring defects of its predecessors. Its distribution of duties was very evenly balanced, and the imposts laid by this law were very nearly what a protective policy naturally demands—the equalization of competition among competing industries. It fully met the expectations of its warmest friends, and reinstated the country in its former position of productiveness and consequent prosperity. It was modified in 1846 by the substitution of *ad valorem* for specific duties—by far the most indefensible species of tariff legislation, on account of the frauds which it invites by means of false valuations; but notwithstanding this unwise amendment, it still offered sufficient protection to our industries to save, for the most part, the general prosperity of the country unharmed and free from peril. From the time of its adoption (1842), indeed, to 1857, the enhancement of both individual and national wealth was marked and unceasing. Several collateral causes, in fact, coupled with our protective policy, rendered the period above named one of almost unexampled prosperity. The immense demand for cereals from Great Britain, owing to the shortness of her crop in 1848, the discovery of the California gold-mines in the following year, and the European convulsion of 1854-56, together with enormous crops in the agricultural districts in the same interval, yoked their voluntary forces with the measure of 1842 in giving a tremendous impetus to the advancement of the United States.

The claims of locality, however, again clamored for and obtained an audience in 1857, and on March 3d of that year a reduction of twenty-five per cent. was made from the duties laid by the imposts of 1842-46, and from the

year first above named until the cannon of Beauregard summoned the supporters of the Government to its defence, the nation vibrated, on the one hand, between the hopes of maintaining its business interests unharmed, and the rapidly thickening chances of a general financial collapse on the other. The precipitation of the rebellion, however, drove the Government, as if by instinct, to seek the aid of protection, which had been its companion in every hour of prior prosperity, to carry it over the inappreciable shoals and quicksands of a measureless war; and the Morrill tariff of March 2, 1861, very similar in its scope to the impost of 1828, was placed upon the national statute-book. It was a faithful ally through the dreary four years wherein half a million of humanity courted death that the republic might live; and in contemplation of the ever since diseased condition of our circulating medium has—by the defence which it has thrown around the industries generated by its predecessors, and those of which it is itself the parent, whereby the production of the nation has been constantly augmented and its laboring classes fully employed—been almost the only agency which has piloted the nation successfully through the maladministration of the last four years, criminally corrupt as it has proved itself, and substantiates, in one respect at least, the wisdom of the man who has ever been the foremost champion of the principle which it represents, and who has recently put upon record “the confident trust that the masses of our countrymen, North and South, are eager to clasp hands across the bloody chasm which has too long divided them, forgetting that they have been enemies in the joyful consciousness that they are, and must henceforth remain, brethren.”

In respect to a partially detailed review, as promised in the outset of this immediate discussion, of the events of our history collateral with this tariff legislation, tending to show its wisdom and desirability, very little need be said.

Such comment has been partly anticipated in the preceding narrative, the general statements of which, in this direction, are too well known to be true by every student of American history to require either amplification or explicit recital. Citations of particular circumstances, therefore, will only be made from such periods as record the most radical changes in our economic policy.

It will be remembered that from the adoption of the tariff of 1791 to 1816 the collateral causes arising from the twenty years' conflict in Europe and the second war of this country with Great Britain so supplemented the inefficiency of the embryo protective policy of that period that universal prosperity attended all sections of the United States. From the commencement of the year last above named, however, until 1824, this artificial source of protection having been exhausted, the nation was comparatively exposed to the onslaughts of the free trade system. The results thereof may be sufficiently appreciated by even a superficial glance at the current events of that period. Under the force of excessive importations, induced by the cheapness of foreign wares as compared with those of American production, our facturing establishments were more than one-half suspended, their operatives discharged and unable to find employment, while those that continued in operation did so at the expense of an inroad upon their working capital. The condition of the agricultural classes was indeed no better. If not more so—that was scarcely possible—they were equally unfortunate and depressed. The unusual European demand for cereals, caused by the raging of a protracted war, had ceased, and as comparative free trade had ruined our facturing interests, the home market for agricultural products was also seriously injured, if not destroyed, so that the selling price of farmers' supplies was not sufficient to pay the cost of production and place them in the seaboard marts for sale and shipment.

•

Every species of real property, moreover, depreciated fully fifty per cent. in value; sales thereof were impossible, except by the sheriff, which were unpleasantly frequent; paper money was resorted to, which only augmented instead of restricted the general distress; and absolute bankruptcy forced its unwelcome presence upon the masses.

The exact condition of our import and export trade during this interval of free trade may be better seen by the citation of a few statistics. The amount of domestic exports in 1796 was \$40,764,097. The annual ratio of increase in our population since that year had been four per cent. Assuming this as a criterion by which to estimate the natural increase of our exports, they should have been in 1823 over \$85,000,000; they were, however, only about \$47,000,000. Looking at particular products of export, the shipments of tobacco in 1791 amounted to 12,428 hogsheads. By the criterion above noted our shipments in 1823 should have been over 250,000 hogsheads, but they were less than 100,000. In 1803 we exported 1,311,853 barrels of flour. Making allowance for the natural falling off of the increased demand from Europe by reason of the close of the war, we should have shipped as much in 1823 as in 1803, but we exported during the year last named only about 700,000 barrels. The same relative diminution was apparent in our exports of corn. Our imports, however, in this interval, reached an average increase of thirty per cent.

The above is not an exaggerated picture of the condition of the country from 1816 to 1824. It does not, in fact, adequately represent the general depression of business interests during this period, but further space cannot be allowed for its portrayal. One fact, however, should not escape attention. Here were eight years of a free trade régime, but instead of the country recovering from the reaction which its supporters admit must attend the first few

years of its adoption, every successive year witnessed an increase of the general distress, till in the autumn of 1823, before the tariff act of 1824 was established, the people were wellnigh upon the point of revolution. Public meetings were constantly held throughout the whole of the seaboard and Middle States, memorializing Congress for relief through legislation.

Another thought of a duplex character is pertinent in this connection. The facts above narrated clearly demonstrate, first, the impossibility of national or individual prosperity where agriculture is quite or nearly the exclusive vocation of the masses—the absolute necessity of versatile industries for public and private advancement; and, second, that capital and labor do not readily find new employment in the absence of unusual inducements. From 1816 to 1824 our agriculturists were embarrassed fully as much as those engaged in facturing industries. The destruction of the latter by free trade, carrying with it, as a natural consequence, the restriction of the home market for farmers' products, tolled the knell of agricultural advancement, and instead of the excess of labor sustaining a reduction year by year, the ranks of the involuntary idlers were annually swelled.

The tariff act of 1824, which resulted from this universal complaint, with the amendatory provisions of 1828—both of which have been explained in a prior connection—afforded the necessary relief. The gates were closed upon our enormous importations of foreign wares; our facturing industries were reinstated in their prior prosperity; the products of agriculture therein found a restored market; our laboring population was divorced from idleness; real estate advanced in value; paper money was discarded, and the advancement of individual and national interests generally revived.

The cause of the departure from this beneficial policy in

1833, as already shown, was purely ephemeral. Every section of the country, except the cotton-growing region, was interested in its continuance, and the real interests of the South, indeed, were inseparably joined with the prosperity of the Middle and seaboard States. Without such prosperity her decline was a mere question of time, so long as she followed the production of her leading agricultural staples to the exclusion of other pursuits. She was truly prosperous when in 1832 she announced her policy of nullification. Her people were all provided with employment, and every year was recording an increase of her material wealth. The compromise act of 1833 was a response to a sectional clamor which should have never been granted, and was followed by a train of evils no less disastrous than those which swept the country from 1816 to 1824.

Space will not permit so extended a citation of particulars from our history during the period of this revival of free trade (1833-42) as was taken from the record of the eight years which first preceded the tariff of 1824. Nor is such a course necessary. The facts are within the knowledge of every intelligent citizen. With the barriers removed from our ports of entry, our imports at once jumped to seventy-five per cent. above their prior volume; excessive trading was essayed; our facturing industries were again paralyzed and the laboring classes forced into idleness; the bank circulation of the country was nearly doubled to float the unhealthy traffic which the excessive importations had induced; trade finally became stagnant; obligations which their makers expected to meet from the prospective profits of speculative dealing matured with their stocks unsold; the same were not protected; prices fell, and the banks, people and nation were enveloped in the financial collapse of 1837.

With the history of the first reign of free trade constantly repeating itself, Congress was again compelled to resort to

protection in 1842. The changed condition of affairs which attended its administration until 1857 was sufficiently narrated in a prior connection, and we pass to a running glance at the disasters which were ushered in by its partial abandonment in the year last named. Our imports were immediately doubled ; the bank circulation extended in an equal ratio as in 1833 for the purpose of aiding the unhealthy traffic in foreign goods ; the events of the last free trade régime were re-enacted ; and the country was again prostrated under the financial crash of 1857.

The subsequent events will not be here epitomized. The object of this immediate sub-subject has been sufficiently compassed. The record shows that the United States under protection have ever been prosperous, but that under free trade, owing to their comparative infancy, misfortune has been their continual lot. The argument of facts is sufficiently conclusive, and the logical inference is unmistakable.

II. THE CLASSES OF ARTICLES TO WHICH A TARIFF SHOULD ATTACH.

So far as the purposes of this treatise are concerned, the remaining discussion of the present chapter may properly be placed almost within the limits of a single paragraph. As already remarked, a detailed statement of all the articles upon which an impost should be laid in order to pursue a consistent, uniform policy of protection would not only be here impracticable, but also irrelevant. And the same is true as to the amount of such an impost. In respect, moreover, to a definition of the exact limits of these two propositions in general, the same has been, inferentially at least, so fully anticipated in the preceding examination of economic principles that further amplification is quite unnecessary. Simply reducing the isolated truths of the prior discussion in this direction, therefore, into tangible, avail-

able rules, the closing comment upon the joint topic of protection and free trade will be now presented.

For the purposes of protection a tariff should only be laid upon such commodities as the nation adopting it has natural advantages to produce, the non-development of which places it, in respect to the production thereof, in unequal competition with foreign states, invariably excluding raw materials, except, perhaps, in the very first stages of the industry which essays their production. In one respect a word of caution may be here advisable. It must be remembered in this connection that the foregoing proposition contemplates alone the elements of protection, without reference to the necessities of a people to lay an impost for mere purposes of revenue. The proposition is seemingly too plain to require elucidation. A word of comment, however, may perhaps be suffered in illustration of both the general rule and also the additional restriction in respect to raw materials. As to the first, tea and coffee furnish a striking example. The climate of our country is such as will not admit of their culture to any advantage at least, if indeed to any extent, with the exception of the former in very restricted localities. The articles, if not actual, are acknowledged necessities of subsistence. It must be a very heavy impost which will banish them from either the cabins that dot the prairies of the West or the humble homes of Eastern artisans. The system of protection, in view of these facts, has no color of right to obstruct, in the slightest manner, their importation. They were unwisely placed under a heavy burden by the tariff of 1824, but the compromise act of 1833 assigned them to the free list, and they have ever since been a common article of household supply, notwithstanding the levy they were subjected to by the Morrill tariff of 1861. This measure, however, contemplated the raising of revenue as well as the protection of our industries. The act of the present session of Congress

(the Forty-second) has properly released them from this impost, and never, except in case of the most pressing financial requirements, should they again be placed under the surveillance of tariff legislation. They are clearly without not only the general rule above stated, but also the collateral one of taxation (to be examined in the next succeeding chapter), which warrants the expediency of an assessment upon business.

Passing to a brief amplification of that portion of the proposition which alludes to raw materials, four leading staples will be instanced for its explanation—namely, iron, coal, lumber and wool. Each one of these articles is subject with us, for the most part, to peculiar conditions. All raw materials, our general proposition would exclude them from the operation of a protective tariff. The first, however, rightly claims its guardianship; the last three have no need of its fostering care.

Our natural advantages for the production of iron are fully, if not more than, ordinary. The demand for it, by reason of our extensive railway projects and its annually increasing consumption in the manufacture of artisans' and farmers' tools, is constantly augmented. Our explorations give promise not only of ore-beds in abundant number, but also of extraordinary supply. We should consequently manufacture all we consume. But the establishment of the industry is attended both with a heavy outlay in the first instance, and the necessity of a considerable education of the labor employed in its conduct. It is therefore entitled, for a few years at least, to the defensive shield of a protective impost.

As to coal the case is entirely different. The cost of transportation is so immense, and other bases of supply are so far distant, that our anthracite interests are subjected to no jeopardy by the absence of all barriers against this particular species in our customs policy. With the bituminous fields of Nova Scotia alone are our mining industries

subject to competition. Of bituminous coal this country, it is true, is also a producer, but the cost of carriage bars the Nova Scotia operators from obtaining customers here, except in the States of the northern Atlantic seaboard. Our bituminous consumption in this restricted locality is so inconsiderable, and our bituminous coal-beds, in addition, are, for the most part, so far removed therefrom, and their product in so small demand, that coal should be found with the articles upon our free list, except when unusual exigencies may demand an unusual revenue.

In reference to lumber, it is hardly, in any instance, a proper subject of tariff legislation. Special causes may make it so, but they are hardly conceivable. The only protection we need in this direction is to shield our rapidly-vanishing forests from further destruction. The meteorological argument is here unanswerable. The tremendous inroads upon our timbered districts are presenting more than auguries of an arid climate. The future probability has become a present fact, and the regularly recurring annual droughts in our long-settled regions are assuming a stubborn significance. Our facturing industries, even, which protection chiefly aims to guard, as well as all others, are almost wholly dependent upon the humidity of the seasons. No pretext whatever, not even the necessities of a revenue larger than this country has ever required, should deny lumber a constant place upon our free list.

With wool the question is very much the same. The general statement is abundantly warranted that our agriculture needs no protection whatever. For the most part it requires no further diversification. Our climatic and territorial status has opened so many avenues of agricultural industry which, by the side of our facturing establishments, are naturally remunerative, that the forced encouragement of the production of this raw staple is quite unnecessary. It is the facture of the textile fabrics into which wool enters

as a component part that here needs protection; and so long as our agricultural industries have sufficient natural demands to profitably absorb their entire attention in other fields of labor, such protection will be aided instead of withheld by leaving our facturers free to purchase this raw product abroad if they can so obtain it more advantageously. If the foreign markets become unwarrantably high in their rates, the unusual profit afforded by the industry will turn the attention of our agriculturists in this direction, to the benefit both of themselves and the workers of the raw staple. The impropriety of essaying protection to wool-growers in this country is fully evidenced by the results of the tariff of March 2, 1867. By this act the tariff upon imported wool was laid at so high a figure that our agricultural population directed a greatly-increased share of their attention to the growth of this staple, and from a clip of about 120,000,000 pounds of wool in 1867 our production jumped to one of 160,000,000 pounds in 1868. This, in connection with importations, so depressed the market that a wholesale slaughter of sheep was inaugurated in 1869; so that from a clip of 160,000,000 pounds in 1868 we went down to one of 110,000,000 pounds in 1870, and the flocks diminished from 40,000,000 sheep in 1869 to 29,000,000 sheep in 1871.

III. THE EXTENT TO WHICH A PROTECTIVE IMPOST SHOULD BE LAID.

The term Protection defines the true limits of the system. Its office is simply to equalize opportunity, to place competing industries upon the same relative basis. The adjustment of a protective tariff, it is true, is a task of a somewhat delicate character, and improper and illegal influence has rendered in the past, as it doubtless will render in the future, the policy, in some instances, the vehicle of both oppression and fraud. That is an argument, however, which

cannot be fairly allowed to militate against protection. It will not answer to saddle this one system with the responsibility of our official corruption—to compel it to answer either for the sin of bribery in the abstract or the venality of our legislators in general. The purification of our politics is one thing—the adjustment of a protective tariff is quite another. The first is not to be compassed by the adoption of free trade, nor the expediency of the latter disproved by its forced bridal with corruption. This last is a very polygamous agency, and through the ministrations of our civil service has, *vi et armis*, wedded itself to all the forces of our political life. The destruction of the means will abolish the evil—the dismissal of the priest will defeat the marriage. Reform our civil service so that the purchase and sale of official place by its members will be impossible, and the machinery of legislation will cease to foster wrong with intent. Place the law-maker where absolute honesty is his only assurance of individual gain, and our statutes, whether economic or otherwise, will no longer disseminate injustice. To assail a system on account of corruption is to demand that the world shall cease its labors because corruption exists.

The amount of a protective impost should be sufficient to make the *cost* (not price) of the foreign commodity to its shipper when placed upon our soil equal to the cost of a similar article of home production when ready for delivery at the facturing mart.

It is nugatory to essay the application of this rule to particular instances. Its clearness will not thereby be further assured. One illustration in detail is as pertinent as another, and the necessity for any or all is non-apparent.

Elucidation of the proposition is likewise uncalled for. The making of the cost of foreign goods to the *shipper*, when placed upon our soil, equal with that of similar home goods to the *producer* when ready for delivery at the fac-

turing mart, *makes the foreign shipper the foreign producer*, and renders the office of the "middleman" impossible. This bars the home producer from adding the profit of the foreign "middleman" to the *cost* of his products, and thereby to that extent unwarrantably enhancing his *price*. And as domestic commercial usage affixes the *price* to goods "in store," the buyer paying the expense of transportation, the dock for the foreign seller and the facturing mart for the home seller are the places to equalize the *cost*. The vendors are then left to the force of equal competition, and he who is satisfied with the smallest profit, due regard to quality being considered, will command the purchasing trade.

CHAPTER III.

TAXATION.

Introductory Comment—The Scope of the Topic—Taxation in the Abstract defined—It is a Creature of Policy—How the March of Civilization Compels it—The Kinds of Taxes Classified—Direct, Indirect, Real, Personal and Individual Taxation defined—The Powers of Taxation Conferred by the Constitution—An Equalization of the Burden the Prime Difficulty of Taxation—How shall it be Overcome?—Proportionate Sacrifice and Proportionate Protection—The Progressive System—Direct Taxation Discussed—The Land-tax—Citations from English History—The Most Just—Income-taxes—Impracticable, and, in the United States, Unconstitutional—Capitation-taxes—Indirect Taxation—A House-tax—Unjust and Unreasonable—Citations from English and Irish History—Eminent Writers thereon—Excise-taxes—They Reach Profits, Vocations and Commodities—Labor in this Connection—They work Injustice—Inappreciable—The Error of Congress in this Connection—The Whisky-tax—High Rates of Taxation upon Luxuries and Low Rates upon Necessaries yield the Greatest Revenue—Taxation by Tariffs—The Results of Indirect Taxation in the United States—Full Statistics show them Oppressive and Unfair—The Question of State Taxation—It should be Confined to Real Property—Objections to the Plan

refuted—The Question of Taxation by the General Government—A Proper Scheme Suggested, and Discussed at length—The Present Needs of the General Government—All Direct Taxes may be Abolished and our Tariff Curtailed, and still Reduce our Debt Fifty Millions per Annum—The Error of Congress in this Respect—“Revenue Reform.”

THE two preceding chapters of the present Part of this treatise, with the exception of a little incidental comment, referred exclusively to the topic of industrial legislation—the guardianship of industry—without respect to the raising of revenue. The discussion now initiated will have to do with legislation for the purposes of revenue, and has been entitled Taxation. By this title the reader must not be misled as to the intended scope of the proposed investigation. Taxation, in its general, unrestricted sense, covers a very extended field of economic inquiry. It forces its way into every avenue of social existence, and raises questions for solution no more delicate than multifarious. Francis Lieber has aptly remarked, “Taxation is omnipresent.” And who can deny the aphorism? Mankind, indeed, are constantly paying for the privilege of life—parting with a portion of their moneyed results to insure the safety of their future efforts. From their food, raiment, shelter and pleasure this tribute is unremittingly demanded, and their public worship even is intruded upon by the presentation of the cushioned plate of philanthropy or charity, asking voluntary aid to stay evils the increase of which, in the absence of such eleemosynary and moral yet optional assessments, would result in the more imperative levy of the secular toll-gatherer for their eradication. Human existence, in short, pays a daily toll from the cradle to the grave, and thereby alone is this at best perilous passage rendered even comparatively safe. Under our form of government this law of taxation shoots off into two distinct and separate channels—local and general. The former relates to the almost

innumerable expedients of State levies for the protection of society, and the latter to the more general impositions of the General Government for the furtherance of the national weal. To this last, with a few important exceptions, the following exposition will alone relate ; and for the purpose of defining as nearly as possible the main outline of the present chapter were the foregoing words of explanation offered. With a due regard to relevancy the adoption of a different course was absolutely impossible. Taxation in general, both local and national, is brought in contact in its march with so many opposing forces, particularly the joint agencies of capital and labor, that the limits of the present work could not permit of its treatment except as more especially connected with our national politics.*

Taxation, in the abstract, is susceptible of a definition both clear and perfect. Neither intending to borrow from the phraseology of the preceding industrial comment on the one hand, nor to commit a breach of propriety by the continuance of that discussion in this connection on the other, taxation, paradox though it may seem, may be termed protection—in the broadest sense of the term, however,—for life, liberty and property. The restricted industrial policy of protection merely essays the guardianship of industry, but the protection of taxation aims to assume the safety and success of the entire body politic. For the accomplishment of this purpose it uses its assessments to defray the expenses of peace and war. The nature of these expenses is too well known to require a detailed explanation. The nation is in one sense a corporate body of individuals, a league for the promotion of the welfare of each and all of its members. Like every individual or association with an end in view, a governmental corporation must have its policy and rules of action, and these, moreover,

* At an early future day the author proposes to devote an entire volume to the discussion of Taxation, Capital and Labor.

require constant modification. As the man of traffic must shape his daily plans so as to avail himself of the advantages of a changing market, or see his commercial edifice swept away by the rush of the onward current, so must Government mould its policy in a manner to avail itself of the opportunities presented by the innovations of Christendom, or sink beneath the waves of civilization's onward march. To this end, as the imperfection of human reason is constantly resulting in an honest difference as to the legal and moral binding force of obligations, and as loyal competition often degenerates into lawless avarice, thus opposing honesty to fraud, and as the passions of man often lead him to acts of absolute violence, it is imperative that justice should be administered among the people, and legal tribunals therefore must be in constant existence. Moreover, as in certain directions private weal depends upon public prosperity, and as the latter is to a great extent measured by the relative material status of nations with each other, internal improvements must be fostered. "The oceans must be married with roads;" the lightning harnessed to wires and electricity be made a postboy; the "silent keels" must plough the waters of inland rivers and neighboring if not foreign seas; and every resource of a nation's territory be brought into perfect subjection to the will of man. Again, the motor-power of the foregoing forces is education. Knowledge and skill are the only pilots along the sea of human progress, and the rapidity of a people's passage over this endless ocean is measured by the extent of their cultured thought. Institutions of learning, therefore, must dot the entire surface of the national domain, that the national intellect may be constantly reinforced. Once more, "the race is not always to the swift nor the battle to the strong," and along the roadside of life's struggling journey minds peerless as well as weak, and bodies stout as well as frail, fall helpless from the ranks. Humanity must not disown

itself; protection must be given to its unfortunates, and asylums of refuge for its stricken children must everywhere afford relief. The execution of these duties requires constant attention, and in the recompense of their performance lie the principal expenses of peace. But competing nations often cross each other's path in their friendly contest for supremacy; violations of the international code are, if not proved, assumed; diplomacy fails in its ministrations; national honor is at stake; argument gives way to force; and herein lie the expenses of war, which Bacon has designated as "one of the highest trials of right." Taxation, then, may be said to be the equivalent paid for the protection of life, liberty and property.

Taxation, to be understandingly considered, should be classified and sub-classified. Such classification is by no means a simple task, and probably no effort in this direction will meet with universal approval. Taxation, however, *in its method of operation*, may be said to be direct and indirect, and the objects which it grasps may be styled real, personal and individual. With this brief preliminary key, the following classification, in connection with the supplemental comment by way of further explanation, will probably prove easy of appreciation, and possibly a convenience.

TAXES ARE—

I. DIRECT.

Direct taxes are—

1. Real, viz.,
Taxes on Land;
2. Personal, viz.,
Income Taxes;
3. Individual, viz.,
Capitation Taxes.

II. INDIRECT.

Indirect taxes are all personal, viz.,

Taxes upon Rents, Vocations, Wages of Labor, Profits and Commodities. The second and the last two are all included in the term Excise.

Of these in their order. And first as to the definition of direct, indirect, real, personal and individual taxes; and, second—after a view of the powers granted by the Constitution for their assessment—a general discussion of their feasibility, noticing all the subdivisions which are found in the foregoing table.

Direct taxation is that in which the sum assessed is paid directly by the individual upon whom the assessment is made, without any possibility of recourse upon third persons for reimbursement. And, as seen by the foregoing table, such taxation is only of three sorts—namely, taxes upon lands, incomes and individuals.

Indirect taxation may be properly defined by saying that it includes all taxes except those laid upon lands, incomes and individuals; that is, whenever the sum assessed may be, so to speak, reassessed upon third persons by the party upon whom the original levy is made, such taxation is indirect.

Real taxes are those which are laid upon what, in law, is denominated real property—namely, taxes upon lands, and the buildings thereto attached. The last portion of this definition is quite unnecessary, except for the benefit of the unprofessional reader, as the term land, in law, always includes and carries with it everything attached to the soil.

Personal taxes are those which are laid upon what, in law, is styled personal property, and include all species of taxation except that upon land (using the term in its technical, legal sense) and the single instance of individual assessment.

Individual taxation is that laid upon persons, and is rightly termed either a capitation or poll tax.

The powers delegated by the national Constitution for a resort to these different methods of taxation are found in the following words of that instrument, viz. :

“ Representatives and direct taxes shall be apportioned among the several States which may be included within

this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

“Congress shall have power to lay and collect taxes, duties, imposts and excises, but all duties, imposts and excises shall be uniform throughout the United States.

“No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

“No tax or duty shall be laid on articles exported from any State.

“No State shall, without the consent of Congress, lay any imposts or duties on imports or exports,” etc. etc.

The foregoing provisions of the Constitution give to both the General and State Governments a concurrent power of taxation in all the forms indicated by the table hereinbefore given, with certain restrictions running against each. The restrictions imposed upon the General Government are—that no direct taxes (that is, either a land, income or capitation tax) shall be laid except upon a basis of the representative population—namely, those qualified to exercise the elective franchise; that duties, imposts and excises shall be uniform throughout the United States; that no duty shall be laid upon exports; and that all *indirect* taxes (see Table) shall be laid with uniformity. The restrictions running against the State governments are—that they shall lay no burden upon any import or export whatever without the consent of Congress, except for sustaining the expense of their inspection laws, and the implied restriction, by force of constitutional law, that their modes of taxation in other directions shall not interfere with or supersede a similar exercise of the taxing power by national authority.

The way is now opened for a general discussion of the

feasibility of these different methods of providing means for the support of the body politic, descending in each instance into the various details suggested by the main inquiry.

The prime and as yet insurmountable difficulty attendant upon any scheme of taxation is to secure a proper equalization of the burden imposed—to proportion the gross sum assessed among the individuals upon whom its payment is made obligatory in such a manner as will not work injustice to any particular class. As already remarked, the history of the world has thus far recorded all efforts in this direction as comparative failures. The first obstacle which presents itself is the basis upon which the proportion above noted shall be made—the criterion by which the extent of the sacrifice individuals should make to government in this direction is to be ascertained. The solution of this immediate inquiry would furnish a key to the entire situation. Its intricacy is sometimes seemingly enhanced, instead of dispelled, by time, but its inherent attractiveness is thereby increased instead of diminished. This necessary sacrifice of citizens to government which the latter compels by taxation has, in most instances if not universally, *been measured by the extent of their possessions, without any increase of the rate of taxation, as the amount of such possessions exceeded certain specified sums—without an advancing scale in the ratio of assessment.* And the criterion is, in the extreme, faulty if not entirely wrong, for it works a manifest injustice to the poorer classes. Let the assessment of real estate be instanced as an illustration. A man of wealth owns a landed estate worth \$50,000. Adjoining his boundaries a poor man has, by means of frugal savings from the meagre income which his manual labor affords him, secured a humble cot and a few rods of ground worth \$2000. The rate of taxation, let it be supposed, is \$10 upon every thousand of valuation. By the

canon of assessment above noted the former will pay a tax of \$500, and the latter one of \$20.

Now, the relative sacrifice of the two individuals to government is not justly measured by the sums last above named. The mere criterion of the extent of possessions, without any *progressive* qualification, so to speak, is not an honest guide in the premises. A man worth \$50,000 will pay the taxed demands of government from an income which *capital* is earning him, unaided by any *manual* assistance of his own; while a man worth \$2000 will pay such demands from the fruit of his manual labor, the results of his daily toil, and his sacrifice, proportionately speaking, is far greater than that of his fellow-contributor. The point, moreover, *at which the extent of such sacrifice begins to lessen is that where the capital or labor taxed is in addition to that which is necessary to be employed for purposes of subsistence.* And—a logical and sensible sequitur—the farther the remove from this point the less the sacrifice. The true theory of economic law contemplates that no burden shall ever be placed upon the actual means of a livelihood; and for every thousand dollars of capital in excess of that which is necessary to be employed for this purpose an additional burden can be imposed without increasing the relative extent of the sacrifice. The contribution comes from an abundance, and the greater the abundance the greater the contribution which can be sacrificed. It is right at this point that we are to approximate, at least, to a just criterion of taxation. The question is not what a man *has*, but what can he reasonably *part with*.

In addition to this argument of proportionate sacrifice there is the argument of proportionate protection. It is a common axiom of every-day life that cares increase with riches. The homely adage is not only true in its simple signification, but also in a compound ratio. Every additional moiety of wealth not only extends the field of super-

visory labor, but, to reduce the thought to as close a compass as possible, as it once more subdivides, so to speak, the *unit* of attention, and as each successive subdivision places the last object of solicitude, the last moiety of wealth, one remove farther from the unit of care than its predecessor, this unit of attention must be increased not only in an equal *numerical* ratio with the increase of moieties of wealth, but also to the further extent of neutralizing the force of *distance* which is incident to the care demanded by the last accession of wealth—the one farthest removed from the original unit of attention. Now, this argument is exactly pertinent to the question of protection which property receives from taxation. As in the case of individual wealth, not only the more wealth the more care, but care *compounded* with every additional accumulation, so in the case of protection of property by taxation, not only the more property the more protection, but protection compounded with every augmentation of property.

On these two grounds of proportionate sacrifice and proportionate protection, taxation by valuation of possessions, without an increase of the rate with every certain well-defined increase of wealth, is not only injustice, but absolute fraud, and the *progressive* system should be instituted in its room.

Having disposed of the inquiry as to what is the true guide for imposing taxes in a general sense, let those in the table hereinbefore named be examined in the light of this elementary principle.

Upon the hypothesis that the proper criterion is established by which to ascertain the extent of individual sacrifice necessary to keep the wheels of the body politic in motion, direct taxation, with the exception, perhaps, of a tax upon luxuries, is the most practicable and equitable method of making the assessment—equitable, because it is aimed directly at the party from whom its payment can

alone proceed ; practicable, because the machinery for its levy and collection is far less intricate and much easier of operation. And yet this species of taxation is usually the most unpopular with the public of any to which government ever resorts. It is thus unpopular because it presents itself in no disguise. It is by no means an urbane collector. It employs no euphemism in its terms of demand, but with honest bluntness says to A or B, Pay me so much money from your own pocket for the support of government. Humanity, ever selfish of its rights, is particularly so in respect to the enforcement of claims which trench upon its coffers. Individual policy, indeed, has given birth to a custom as universal as its origin is primitive, of entering a demurrer to the validity of almost every direct draft upon its exchequer. The avenues thereto which are most easy of passage are those which are indirect and insidious—those which are not discovered until the wily collector has made both his entree and exit, taking with him the required tribute. And in most instances it is simply for the reason that the people unwillingly submit to direct taxation that the more indirect and unjust methods hereafter to be noticed are resorted to by government. It is simply because humanity will part with one hundred dollars on an indirect demand more willingly than it will with five dollars in response to an immediate call, that the mountain of injustice, which will appear in a future connection, ever incident to indirect taxes, is suffered and allowed. Taking the fact of such injustice, in this connection, upon trust, the extent of it can be partially appreciated in the collateral fact that five-sixths of the enormous revenues of the General Government during the last decade have emanated from indirect taxation.

Descending to the particular kinds of direct taxation, that upon land is first in order. Our theory of land-taxes was originally taken from the English model, but has been

subjected to somewhat material modifications, and should suffer at least two more very important changes.

The land-tax of England had its origin in the feudal system. In 1066, when William of Normandy, by the victory of Hastings, elected himself monarch of the English realm, the estates of the conquered people were confiscated, and their evidences of title taken from their designated depositaries and destroyed. The conqueror then parceled out the territory among his nobles, who in turn, by the so-called process of sub-infeudation, subdivided it among their tenantry, the peasant population. The process of sub-infeudation was neither a simple lease nor an absolute sale. It was a conveyance, resembling, more than aught else, a perpetual lease, upon the condition that the tenant should not reconvey except with the permission of his lord; and in this and many other instances not necessary to mention the tenant was required to "attorn" to his lord by the payment of certain stipulated assessments. The lord, in turn, had certain obligations of a similar nature to meet with his sovereign; and the duties of both tenant and lord in this direction, particularly the former, were measured by the extent of their peculiar landed estates. These last, at the accession of the Conqueror, were subjected to a valuation throughout the realm. From ruder methods of canceling the demands of this sort imposed by the nobles and the government a regular moneyed payment was finally adopted, but upon the same continued basis, the extent of the landed estate. The governmental valuation of the English estates, begun by the Norman usurper in 1066, has ever since been continued, and its principal peculiarity is its fixedness. The valuations have stood for years and decades without change; so that, with the continual increase in the value of land for the greater portion of the time since the Norman conquest, the landed aristocrats have really been taxed upon only a very small portion of their estates. The reve-

nue of the Crown has been raised in more indirect and unjust methods. This system of valuation is incident to nearly all the states of the Continent, excepting France. That of Germany, however, is very much perfected, and the government surveys are very frequently made.

This system of land-tax, based upon valuation, is the American system, with the exception that our valuations or assessments are, in the great majority of instances at least, made annually. A badge of the indefensible favoritism shown by the English Government to its landed aristocrats, however, has unwittingly, as it were, crept into our system of land taxation—namely, the principle of valuing or assessing land for about one-half of its actual value. There is not a shadow of defence or reason in such a policy. There is no tax so just and feasible as a land-tax—just, because it receives the first and best protection of government; feasible, because it presents a more stable basis upon which to predicate a criterion by which to judge the proper amount of sacrifice the owner can fitly make than any other species of wealth. And by virtue of this element of appreciability the tax should be laid upon its exact market value, and not a reduced one. Unimproved property, moreover, should not escape the burden, but be treated in the same relative manner. This, and the establishment of the progressive system, as seen in the illustration of the elementary principle hereinbefore discussed, and shown to be necessary for the prevention of injustice, are the two changes already alleged as imperative in our system of land taxation. We would not argue, with Quesnai, the founder of the novel French agricultural system of political economy, that all taxes should be laid upon land, because, as he alleges, agriculture is the prime business of the world, *and land the ultimate fund for the payment of all taxes*; but certain it is that it does not bear its just share of the burden of taxation in the United States.

The next species of direct taxation is the income-tax. In theory it is perfectly defensible, but in practice it is both unjust and imperfect. If the difficulty could be avoided of submitting to the dishonest returns which in a great number, if not a majority, of instances are made to Government, there would be no defect in its practical operation except that of its inquisitorial character. But gross dishonesty has ever attended very many returns of personal income, partly to avoid the payment of the tax and partly by reason of an unwillingness to disclose to the public the exact status of the present earnings of one's capital or labor. This difficulty, moreover, cannot be avoided. Loyalty to conscience cannot be compelled by human ordinances, and such loyalty is the sole procurer of correct statements of income. There is no other possible means by which such correctness can be secured. Property in income is entirely different from property in land. The first is invisible, intangible—the last is both visible *and* tangible. The former can be concealed—the latter never. This dishonesty in returns works an open, unblushing wrong upon those who fairly expose the extent of their income to the inspection of Government. This species of dishonesty, however, has a show of reason, though not, of course, an excuse. There are very few individuals, except those who are morbidly exclusive and miserly, who will object, save for the purpose of avoiding the levy, of disclosing, when fairly necessary, the extent of *past* accumulation of invested wealth. But every individual may, for other reasons besides the one above noted, desire to conceal the extent of his accruing income. And such reasons are both tenable and wholesome. They are of a purely politic character. In a score of collateral instances an honest exposure of annual earnings of either capital or labor would militate against future success in this direction, and no one can be rightly called upon to thus voluntarily jeopardize his own

interests. It is contrary to the genius and spirit of republican institutions, opposed to the most valued traditions of the United States; and if for no other cause the inquisitorial feature of an income-tax should always deny it a place in our economic policy.

In addition to the foregoing objections, income taxation, as generally laid, and particularly the system which is now expiring by limitation in the United States, lays itself open to unanswerable criticism in other directions. The restricted general system is vulnerable upon only one other point, but as confined to this country it is faulty in two additional particulars. The general abstract objection above noted is a legacy bequeathed by the English law—namely, the exclusion of the progressive feature from the scheme of income taxation. The argument, given in full in a prior connection, of proportionate sacrifice and proportionate protection will not be here repeated. It is that argument, however, to which reference is here intended, and the force of it comes directly home to the immediate topic of investigation. The policy of England condemns the progressive feature in all schemes of taxation. And in so doing she is perfectly consistent with the spirit of her institutions and her time-honored traditions. The English Government, notwithstanding its many virtues, is a government of aristocrats, and not of the masses—a guardian of wealth, and not of poverty. It bars the system of progressive taxation from its statute-book by virtue, as it alleges, of the fact that the scheme *confiscates* the property of the wealthy classes. The law-makers of England in theory, in this position, are, as already stated, entirely consistent, but they have no right to yoke consistency with an abuse of terms. “Confiscation” is not the proper term to fortify their argument. “We foster wealth, and not poverty, capital, and not labor; therefore we give to the former the greater protection and the lesser burden.” This

is the true and consistent ground of occupation for English economists. But it is tainted with injustice. It is not based upon the equality of the human brotherhood, and for the reasons adduced in the exposition of the principles of proportionate sacrifice and proportionate protection, all schemes of income taxation should be progressive; that is, at well-defined points in the rising scale of property in incomes the rate of taxation should be increased. This progressive feature was incident to the original tax law upon incomes now expiring by limitation in this country, but the forces of wealth marshaled themselves against its continuance, and the provision was unwisely and unjustly repealed.

As confined to the United States, however, the scheme of income taxation by which the people have been assessed opposes itself to an argument of far greater gravity. It arrays itself against the sanctity of our organic law. It is unqualifiedly unconstitutional. Our table, hereinbefore given, places an income-tax under the head of direct taxation, and there it unqualifiedly belongs. No authority of any weight has ever denied the proposition. Reference to the constitutional provisions already quoted will show that all direct taxes must be laid upon the basis of the representative population, as distinguished from the one other general canon therein given of uniformity. The income-tax, however, *was* laid upon the basis of uniformity, without regard to the extent of the representative population, *all* incomes having been levied upon wherever found.

The last of the direct taxes is a capitation or poll tax. This tax is incident to some of the States as a prerequisite for the exercise of the elective franchise, but is inadvisable. Its inexpediency consists in the impossibility of equally apportioning the burden, of correctly ascertaining the proper extent of needed individual sacrifice in this direction. It has always been laid upon an arbitrary basis. William III. imposed this tax upon his English sub-

jects in respect to their rank ; and in consideration of the aristocratic form of the English Government, if the theory was not slain in practice, it was a most equitable manner of making the assessment. The sovereigns of France have also made these peculiar levies upon the same basis. In the United States they have been laid at so much a poll or head, without any deviation in respect to the wealth of the contributor. But as a prerequisite for voting it is certainly a greater benefit for a man to vote who has property to be protected by the legislation of the recipient of his ballot, than for one who has no property whatever ; and the same principle is pertinent to all the intermediate stages of wealth. And still more difficult the question, to be hereafter discussed, Has not the property-holder a superior right to the exercise of the elective franchise, at least so far as tax laws are concerned, than one who is destitute or nearly destitute of wealth ? The equitable adjustment of a capitation-tax is impossible, and such a levy seemingly ought not to be deemed worthy of toleration.

To conclude this examination of direct taxes, the only feasible one, and the one most feasible and just of all taxes whatsoever, is a land-tax. It is not insidious, it is appreciable of an exact, equitable adjustment, and it seizes an object which receives the greatest material protection afforded by government.

The discussion of the subject of indirect taxation, now in order, as the term indicates, opens a field of inquiry in many respects far more inappreciable than that which has been just dismissed. The vital objection to indirect taxation is the uncertainty of its character. As it is laid entirely upon the species of property known as personal, it is utterly impossible to determine upon whom the burden will fall, further than the very general statement that the consumer or user of the subject of the assessment will be the ultimate source of payment. In other words, the class

of individuals can be defined, but not the several separate persons. This feature of indirect taxation robs it of the fundamental requisite of a just and wholesome system—namely, the inability of government to determine the extent of sacrifice which the real contributor should be called upon to make. Indefinite in inception, insidious and deceptive in operation, uncertain in respect to the party from whom it will eventually compel tribute, this method of providing means for the support of government is an unblushing disseminator of injustice and oppression. As will hereafter appear, this system of taxation, for the most part, lays its hand upon the ordinary means of subsistence. Now, the poorer classes, in this and all other countries, very greatly exceed in number those of the wealthy and independent. The aggregate consumption of the necessities of life, consequently, is very much greater in the former than in the latter class; and as indirect taxes fix their hold, for the most part, upon these subjects of assessment, by far the greatest portion of the levies of government by this peculiar method are borne by the followers of manual toil. Argument is unnecessary to prove the injustice of such results. As stated in a prior connection, five-sixths of the enormous revenues of the Government since 1861 have eventuated from indirect taxes; and in the light of the general principles above maintained, which will soon receive a detailed exposition, the wrongs that have been inflicted upon the laboring portion of our population can be partially imagined, though by no means realized.

Passing now to a very brief discussion of the several kinds of indirect taxes, as seen in the table hereinbefore given, the first in order is a tax upon rents, or what is sometimes known as a house-tax. Although in some respects apparently just, the better opinion appears to pronounce it unadvisable and inexpedient. It has never

been adopted to any great extent without producing conclusive evidence, not of theoretical, but of practical unfairness. And the unfairness consists in the inability of government to measure the means of the party who will ultimately respond to its call. It is a very specious argument to say that the house a man rents is the very best exponent of his means, but the position fails to afford a just criterion for laying a tax, in this country at least. A man with a large family will of course require a larger house than a man with a small one; and yet the former may—in all probability will—by the simple reason of the extent of his family, be possessed of much more limited means than the latter. The spirit and genius of our institutions assume to encourage rather than prohibit an augmentation of our population; but a house-tax, laid indiscriminately save with a view to the rental value of the house, would assess a man for complying with one of the principal features of our governmental policy. It would punish him by an amercement for lending aid to the furtherance of a principle which Government assumes to foster. The English economists answer this argument, so far as Great Britain is concerned, with entire conclusiveness and consistency. A believer in the doctrine of Malthus, as already explained, in respect to the increase of population and throwing the shield of government over the rich instead of the poor, John Stuart Mill rightly speaks for England when he says, in response to the injustice of a house-tax above noted, that “the having of a large family, so far as concerns the public interest, is a thing rather to be discouraged than promoted.” It is with a very poor grace that any one may style the remarks of so eminent a statesman and sincere a philanthropist as Mr. Mill inhuman, but it is hardly possible to allow the justice of his position. Francis Bowen answers him with more truth than jest when he says, “In this country, apart from the ridicule which

would follow the proposal of such a law, a tax upon bachelors would be far more equitable than a fine for having children."

As already stated, taxes upon rents, or house-taxes, have never met with public favor. The original English house-tax was laid at a stated sum per window, and brought upon its author the charge of making a levy upon daylight. Another form, adopted by the Irish law, was an assessment of a fixed sum upon every hearth, and an historic writer records the fact that it quenched the fires in more than half the cots of Ireland. This species of taxation is but little known in this country. The report of the recent commission appointed to devise a scheme of State taxation for New York, which is based, in a great degree, upon the economic principles of Adam Smith—which are wholly irrelevant to the needs of the American people—incorporates a house-tax into the scheme which it recommends for adoption. But, for the reasons given in our remarks upon indirect taxation in general, it appears unworthy of toleration. Its uncertainty and indefiniteness, both as to rightly estimating the extent of the needed sacrifice, and in respect to ascertaining the person upon whom the burden would fall, coupled with the injustice it would work in the case of large families, furnish a sufficient argument against the scheme. Innovations in our tax laws should tend toward direct instead of indirect assessments.

Taxes upon vocations are next in order. For the most part they appear in the garb of a levy for a license to follow particular callings; but as such taxes, together with those upon the profits of business, ultimately fasten themselves upon the commodities with which the licensed person deals, and are consequently paid by the consumer, their examination may be properly merged into the investigation of taxes upon commodities. Comment upon the last will be equally pertinent to the first. Before engaging upon

that subject, however, a word in respect to taxes upon the wages of labor will be suffered.

If taxes upon labor are to be tolerated at all, there is no more proper method of making the assessment than to lay it upon the actual remuneration which labor receives. The extent of the laborer's means are in this manner pretty nearly appreciable, and there is a certainty and directness in the scheme which renders it highly advisable. It is certainly far preferable to the present burden imposed upon our laboring classes, as seen in the tax which they pay upon articles of consumption, resulting from our system of indirect assessments; for in this way they undoubtedly bear a good deal more than a just proportion of the public expense. A free trader will interpose a plea in this connection: "Abolish your tariff." Of that when taxes upon commodities shall be in order. But save in the case of the direst needs of Government, and then only after a very liberal minimum has been exempted, this discussion denies the right to lay a tax upon manual toil. There is not the slightest necessity for such a course at the present time in this country, and the heavy tribute which labor has paid to Government for the few years last past by means of indirect taxation, as will be seen in the treatment of a tax on commodities, stands as a monument of national wrong and oppression.

The term excise is a generic one, and includes taxes upon profits, vocations and commodities. The first two, as already stated, by reason of their absorption, so to speak, by the latter, are not worthy of a separate consideration. Their discussion is here merged into that of a tax upon commodities, and the following comment also, by virtue of the opening sentence of this paragraph, may be looked upon as an examination of excise taxation.

A tax upon commodities, in the great majority of instances, only refers to those which enter into general con

sumption. This scheme of taxation appears to have originated in the inability of government to ascertain the income or revenue of individuals. The theory is that as the returns from private labor and capital are not appreciable by government, a burden placed upon consumable commodities, a tax upon the articles which enter into the requisites of both ordinary and expensive living, will justly proportion the general burden among the masses. Such a scheme admits of several methods, or rather plans, of adjustment. If the burden laid upon those articles which only form a part of the requisites for expensive living is relatively greater than that imposed upon commodities consumed by the poor, the tax is more equitably distributed; but even then it works an injustice.

Consumable commodities may be divided into three great classes—namely, necessities, comforts and luxuries. The first consists of articles which are absolutely indispensable for the maintenance of existence; the last two are dependent solely upon custom. Such custom, moreover, is dependent upon national habit and individual status. What would be a comfort or luxury in one country would be a simple necessity in another. The article of wearing apparel may be cited as an illustration. The inhabitants of the East, in pursuance of a usage, induced by climatic and other causes, which antedates the memory of man in its adoption, require but a small amount of covering. The national habit of the United States, totally opposite in its character, would consequently render the plainest necessity here an undoubted luxury among the Australian natives. In reference to individual status also, the different grades of wealth, and the maintenance of the social position considered indispensably incident thereto, artificial and ephemeral though it may or may not be, make a luxury for one an unqualified necessity for another.

Now, the difficulty which presents itself at the outset of

this scheme of commodity taxation is at this point foreshadowed—that of so adjusting the burden as to draw with equitable proportion from all consumers. The peculiar facts, as stated in the next preceding paragraph, render such an adjustment absolutely impossible. The usual canon of taxation, it is true, is to tax necessities not at all, comforts lightly, and luxuries heavily. But just here is the embarrassment. What is a luxury to one is but a comfort to another, and what is a comfort to a second is but a necessity to a third. The impracticability of an income-tax in one sense, at least, is made plainly apparent in this connection. In accordance with the spirit of the canon which directs no tax upon necessities, the originators of this tax law announce an exemption of such articles from its operation by the establishment of a minimum of income which shall be absolved from all burden—*by the declaration that a certain number of dollars will purchase all the annual necessities which any and every man may stand in need of.* The position is nothing more or less than blind assumption.

Again, the relative difference in the returns which the same rate of taxation will yield from these different classes of commodities presents another difficulty. A small ratio of taxation on necessities and comforts will eventuate in greater returns than a larger one; but in the case of luxuries the greater the rate the more abundant the tribute. This antithesis may seem hardly tenable at first thought, but a little reflection will fully corroborate the statement. Necessaries and comforts are sought after solely on account of their intrinsic worth, and not for any collateral reason, such as the gratification of pride, vanity or caprice. The masses avail themselves of the benefits of their possession and use whenever and wherever possible; and the extent of this patronage of the masses is measured by the degree of self-denial which their limited incomes compel them to practice. If necessities and comforts are cheap, the masses

will appropriate them largely ; if dear, they will make their acquaintance only to the extent of their restricted means. By force of these facts, a low rate of taxation on these two classes of consumable commodities will yield a larger revenue to Government than a high one ; and down to a very minimum point the less the ratio of taxation the more augmented the revenue. Let the article of coffee be instanced as an illustration. Tax it fifty cents per pound, and only the comparatively restricted wealthy class will continue its use to any considerable degree. This class will average about one-tenth of our population. Now, to reduce the problem to a mathematical solution, let a certain quantity (any quantity will serve the illustration) of coffee be supposed to represent the annual consumption of this article by this one-tenth of our inhabitants—say one thousand pounds. With a tax imposed of fifty cents per pound, the revenue to Government would be five hundred dollars. But put the Government burden at ten cents per pound, and the consumption of coffee will be universal ; the remaining nine-tenths of the population will place it upon their list of household stores, and the annual consumption by the hypothesis will be ten thousand pounds ; and with a tax of ten cents per pound the Government revenue will be one thousand dollars instead of five hundred dollars when the rate of taxation was five times greater.

Both English and American history furnishes abundant proofs of the position. After the adoption of free trade by England in 1845, the duty upon sugar (which, as England was not a producer of sugar, was not protective, but merely a tax) was decreased one-half. Subsequent to that period England's consumption of sugar increased about one hundred and twenty-five per cent. per annum, and yielded a revenue of seven millions sterling, against one of five millions sterling before the customs duty was diminished. The American Morrill tariff of 1861 laid a duty upon some articles

not produced in this country of about fifty per cent. ad valorem. In the light of a true policy, which looked at that period to the realization of the largest amount of revenue, it was a most egregious violation of economic law, and Congress seems to have learned the truth wholly by accident. In 1867, with the war closed and future increase of expenditure made no longer probable, the rates of impost upon these articles were reduced, upon the hypothesis that a smaller amount of revenue would be returned. A year later Congress was astounded at the fact that the returns of the reduced tariff had not only exceeded the Treasury's estimates, but also, in a relative sense, those of the former and higher impost; and every subsequent year, with but one or two exceptions at most, the report of the Secretary of the Treasury has conveyed to Congress the unaccountable intelligence that his estimates of receipts for the regular fiscal year have been considerably below the actual returns.

Again, these excessive rates of taxation upon necessities and comforts, upon articles in common use, are an offer of a premium upon fraud. Take, for an illustration, the tax on whisky of the early portion of the last decade. It may provoke a smile to see this article *seemingly* classed under the head of necessities or comforts, but the generality of its use warrants its citation in proof of the present argument. Prior to the war the annual production of this article in the United States was about one hundred millions of gallons. The first tax of twenty cents a gallon yielded a yearly revenue of about thirty millions of dollars. A subsequent tax of two dollars per gallon resulted in an annual revenue return of about fourteen millions of dollars; but with the reduced tax of fifty cents a gallon in 1869 the yearly revenue from whisky made the enormous jump of over thirty millions of dollars. Now, the production of whisky was at no time diminished during the interval of 1860-68, and the result of the excessive impost will be seen

to be—fourteen millions of dollars representing the revenue, one hundred millions of gallons the production, and two dollars per gallon the tax—that the facturers or dealers added the amount of the tax to their price, paid the Government fourteen cents per gallon instead of two dollars, and pocketed the balance, less the cost of production and the transaction of business.

These enormous frauds were perpetrated in three ways. The Government inspectors were paid five dollars per day for watching the distilleries and compelling honest returns of the product. It was an easy matter for the distiller to pay the inspector fifty dollars per day, and gauge his returns by the elasticity of the combined conscience of the two. And it was done. Moreover, thousands of petty stills were running in back cellars and secluded localities, which failed to offer the faithful Government watchmen any partnership in their business, and many a brawny arm was constantly pulling an oar from Canada to American waters, with a package of whisky stowed away for ballast that never paid a dollar of either tariff or excise tribute to Government. In this manner Government furnished the means whereby both it and the people were robbed of millions of dollars by a class whose paucity of number was only equaled by their dishonesty. The advertisement on the part of the former, however, of a desire to be swindled presented terms too tempting to hope for universal indifference in respect to their acceptance.

Passing to the last branch of the antithetical proposition under discussion, that the greater the rate of taxation upon luxuries the greater the returns of revenue, very little need be said. The truth of the allegation is susceptible of easy proof. The point received an inferential elucidation when "Money and Currency" were discussed in the first chapter of this treatise. Unlike necessities and comforts, luxuries are not sought after on the score of their intrinsic worth.

They are obtained, for the most part, simply to please the eye, gratify the taste and answer the desire for ostentation and display. Their use and consumption are governed entirely by the code of fashion, and the cardinal doctrine of this code is the employment of articles which bear the impress of scarcity or costliness—either one or the other alone or both combined. Their beauty or intrinsic worth is not the prime requisite which secures the patronage of the fashionable world. Both beautiful and useful many of these articles are, it is true, but the attributes first above named are what afford them an acquaintance with the devotees of fashion and the possessors of wealth. Every-day life illustrates the truthfulness of the position. The frequent changes in fashionable costume and accompaniments are based upon this one solitary idea. Novelties are placed in the market by the jeweler or the *modiste* at a really fictitious price; and simply because they are novel and costly, the subjects of fashion appropriate them, not only willingly, but eagerly, and that frequently in open violation of the plainest rules of really cultured and correct taste. The shocking burlesque upon female attire which has characterized some of the costumes of the last decade lend their influence to the support of our general allegation. The moment, however, these novelties become common, the instant competition reduces their price to its legitimate commercial standard, the code of fashion is violated, their association with the wealthy ceases, and the art of the *modiste* and costumer is again brought into requisition in order to satisfy the mandates of this capricious and purely artificial law. Let an hypothesis be made from some of the principal articles of Fashion's toilet—gold, pearl and diamond jewelry, and dress goods of silk, satin and lace. Now, if by some unexpected discovery of immense beds of gold and fields of pearls and diamonds on the one hand, and a new and utilizing process of facture on the other,

whereby all of these commodities could be furnished to the consumer at trivial or ordinary rates, they would immediately become common in the wardrobe of the masses, and be as summarily banished from the *trousseau* of the fashionable and the wealthy.

With these facts in mind a moment's reflection will show that a high rate of taxation upon these articles of real luxury will not materially decrease their consumption, for they are, in the great majority of instances, confined to the use and association of the moneyed classes. Instead of such a result, a high tax upon luxuries positively caters to the desires of the fashionable world. It stamps them with the prime qualification of Fashion's servants—costliness. It responds to the cardinal behest of this exclusive law, and raises a barrier between its subjects and those of a so-called lower life. And since, except in the case of a rate of taxation of unprecedented enormity, the consumption of luxuries is not curtailed by an excise or other burden, the statement finds abundant warrant that up to this point of very excessive taxation the greater the tax upon luxuries the greater the revenue.

The difference in the results of the operation of the same ratio of taxation upon necessities, comforts and luxuries, as stated in the outset of this immediate discussion, seems to be plainly and fully apparent. Before a final summing up is made, however, of this system of taxing consumable commodities, and of the principle of indirect taxation in general, there are certain conditions of a tariff impost pertinent to this inquiry which must receive a passing consideration.

This very brief comment upon the incidental taxation of consumable commodities by means of a tariff impost must, of necessity, be introduced by a statement of a truth made familiar by the next preceding chapter—namely, tariffs are of two sorts, industrial and revenue. The first, aiming

alone to foster home industry, lays an impost only upon such articles as are subjects of home production, and to an extent already defined, and is styled protection. The last lays its impost without any such rule of discrimination upon any imported commodity for the single purpose of providing means for the support of Government, and is rightly styled a revenue tariff. The way is now opened for a statement of the prime point of this immediate investigation—namely, a protective tariff is not an instrument of taxation—a revenue tariff is. That protection is not taxation was fully shown in the first chapter of the present part of this treatise, when “Protection and Free Trade” were submitted to a detailed examination. The argument will not be reiterated in full. Reference may be had to it if occasion requires. Suffice it in this connection to give its substance—that *in reference to all articles of home production* the cost of such production, by force of the law of competition, governs the selling price, irrespective of the amount of a tariff, however excessive, upon similar commodities imported from foreign countries.

In the case of articles other than those of home production, however, a customs duty is a simple instrument of taxation. And the reason is obvious. Contrasting such a tariff with one laid for protection only, the fundamental conditions are reversed. As there is no home competition to have any influence upon the extent of price, the rates of the foreign markets, *as fixed by foreign competition*, are supreme. The purchasing country wherein such commodities are not produced is wholly at their mercy, and a tariff necessarily adds to the amount of the foreign price. In the absence of home competition it is a mere problem in simple addition. So far as this country is concerned, take, for example, the article of coffee. Its production in the United States, relatively speaking, is absolutely impossible. Let it be supposed that the price of this staple in a West

India port is fifty cents per pound. Impose a duty upon all importations of the same to the extent of ten cents a pound, and in the absence of home competition what possible agency is there to place the price below sixty cents per pound in our commercial marts?

This incidental discussion must not be assumed to declaim against revenue tariffs because they prove themselves to be instruments of taxation. It does not. On the other hand, in the great majority of instances, to a certain extent, as will hereafter be seen, it endorses them, and endorses them *simply and solely because they are means of laying taxes*. The direct aim of the present comment, however, was to show the only additional instance—with the exception of a stamp-tax, which, for the most part, is but another species of excise, and therefore covered by the past discussion, and too well understood to require a separate elucidation—in which consumable commodities are taxed outside of the forms indicated in the table hereinbefore given.

In the light of these simple, self-evident truths (the digression craves pardon) it is seemingly impossible to account for the favorite expression of free traders, "Protection is taxation." It is an abuse of terms. Protection, it is true, is secured by the employment of tariffs. Of the last, as already stated, there are but two in number, protective and revenue. The last *is* taxation—the former not. The distinction is sharp and well defined, natural and not artificial, and with the aid of the slightest possible reflection there would seem to be no ground for confusion.

A final summing up of this topic of commodity and indirect taxation will now be made, a general outline of a feasible system of State and national taxation be then indicated, and the present chapter be brought to a conclusion.

The task above assigned will be best initiated by a statement of the present revenue returns of Government. For the fiscal year ending June 30, 1872, the aggregate

revenue of Government from imposts and taxes was about \$350,000,000—\$225,000,000 of the former and \$125,000,000 of the latter. Of this last about \$60,000,000 eventuated from *direct* taxation. With these statistics arithmetical calculation will show—the customs duties reckoned as income from indirect taxation, of course, as such income all springs from an impost on commodities—that the revenue of Government derived from indirect taxes in the fiscal year above named was about \$290,000,000, or five-sixths of the entire receipts. The above are all round numbers, but the position in reference to the amount of indirect taxes is prejudiced instead of favored by the numerical statement.

At this point let some of the practical workings of indirect taxation be recalled. It will be remembered that under this system of taxation are found the following impossibilities—namely: that of ascertaining the party upon whom the burden will fall, further than to say the consumer, which amounts to nothing so far as identification is concerned; that of ascertaining the extent of sacrifice which these uncertain individuals are able to make; and that of establishing a ratio of assessment which will yield relatively equal returns from the three great classes of commodities—necessaries, comforts and luxuries.

Returning now to the record of reported facts, the statement finds abundant warrant from the statistics of our revenue returns, that fully fifty per cent. of the revenue received from indirect taxes eventuated from the burden laid upon ordinary articles of subsistence, or those which come under the heads of necessities and comforts, which amount to \$145,000,000. As already stated in a prior connection, the wealthy or comparatively independent classes in this country do not constitute above one-tenth of our aggregate population. The consequence is, that as nine-tenths of the necessities and comforts used in the

United States are consumed by the poorer classes, they have borne nine-tenths of the burden imposed upon these commodities, which amounts (\$145,000,000 representing the gross sum) in round numbers to \$130,000,000. But two other items, which cannot be exactly ascertained, must be placed to the credit of our laboring population. One is the portion of the direct taxation which they have borne in the levy upon incomes, and the other results from the special manner in which the commodity-tax has been laid. It has been specific, and rightly so, for *ad valorem* taxes open a door, as explained in a prior connection, to wholesale fraud and deception. But the truth of this general principle has not made the poor man's burden any easier to bear. For instance, tea has been subjected to an impost of, say, twenty cents per pound, without regard to value. A pound worth fifty cents, which a laboring man consumes, pays the same tribute to Government as a pound worth two dollars that his wealthy neighbor can afford to purchase. The exact amount of additional taxation sustained in these two ways by the poorer classes, as already noted, it is impossible to record, but it may be safely placed at \$20,000,000. Add this sum to \$130,000,000, as before deduced, and it is seen that \$150,000,000 represent about the amount of the national burden of the fiscal year 1871-72 which was borne by manual toil. The gross sum of this burden, it will be remembered, was \$350,000,000, leaving \$200,000,000 to be credited to the account of capital; and the proportion is grossly wrong and unjust. It is by no means an equality of sacrifice.

The argument is not intended to deny the right of commodity and indirect taxation. Due necessities of Government, such as were precipitated upon the United States in 1861, furnish abundant reason and excuse for such a course—and even for the ordinary purpose of a peace revenue they are defensible—but they have been laid, in the ten

years last past, with great inconsistency and unwisdom, so far as this country is concerned. The alcavala excise of Spain, which levied a tax upon commodities every time they passed to a new owner, was scarcely more prejudicial to Spanish commerce than our commodity-tax has been to the interests of labor. A brief suggestion will be made in respect to such levies in a future connection, but the line of argument as already defined requires an intimation at this point of the most equitable method of local State taxation.

The States, by virtue of our organic law, are relieved of very much of the embarrassment incident to the General Government as connected with the subject of taxation. Prohibited as they are from laying any duties upon imports, they have no jurisdiction in the field of industrial legislation. The scope of their taxing power is to procure means for the support of their local governments, and may be made comparatively simple in its operation and just and impartial in its results. It will be remembered that this discussion has disputed the feasibility of all direct taxes, except a land-tax, stamping as unadvisable the other direct taxes—namely, those upon incomes and a capitation or poll tax. It has also contested the propriety of a tax upon rents. Referring to those arguments, the proposition is now asserted that all State taxation should be direct, and, by force of the immediate preceding comment, should be confined to a tax upon land (using the term in its legal sense as already explained), or, in other words, upon real estate.

The moneyed requirements of the State governments in times of peace are comparatively trivial (except when administered as those of the Southern States have been for the last five years by Northern men), and the burden of their support, as explained in the prior discussion of a land-tax, is more equitably, evenly and proportionately distributed when it is imposed entirely upon real property. The maintenance of this land-tax will not be here reviewed.

Allusion to it may be had as necessity suggests, but the fact that it goes directly home to the party who must first, last and alone respond to the assessment; that his ability of sacrifice may be ascertained to a positive certainty; that the subject of the levy receives the best and principal protection of the local governments; and that the aggregate burden may be distributed over this species of wealth with a relatively equal and just proportion,—all this combined makes it the most feasible and wholesome method of taxation for our local State governments. In time of war, when heavier contributions are obligatory, the General Government will exercise its constitutional power, and by means of its revenue and excise taxes upon consumable commodities, etc. etc., will summon the laboring and other classes to yoke their forces with those of capital for the maintenance of national safety and honor.

The objection will of course be raised that such a system of exclusive land taxation would discourage its ownership, and consequently its improvement. Not at all. That is a matter which would entirely govern itself. In the first place, land is regarded, and always will be, as the safest investment for capital, and by virtue of this one fact alone it would not suffer under this alleged prejudice. But the law of supply and demand, coupled with speculative foresight, would interpose its influence and prevent any such downward tendency in respect to land ownership and its cultivation. The cheapness which would be incident to this, like all other species of property, under the alleged depression resulting from making it the only subject of State taxation, would attract capital to investment therein. But such depression would not occur. Aside from its admitted superiority as a subject of investment on the mere ground of financial policy, there are other causes which always render the possession of landed property desirable. The wealthy man will always own the place of

his residence, and the poor man will always aspire to the ability of calling the cot which holds his family his own. These facts, coupled with the opportunity presented in our rapidly-growing country for realizing large moneyed returns from the purchase and sale of real estate, would effectually bar the alleged decline in its ownership and cultivation in the event of making it the *only* subject of State taxation, when at the present time it responds to nearly one-half of the demands of these local governments for support. The difference in the relative conditions is too trivial to allow the additional burden the force which is claimed by the objection. It would prove ephemeral and not real.

As to the method in which such a land-tax should be laid, a single word should be added to the foregoing comment. Citing the arguments of proportionate sacrifice and proportionate protection given in detail at an earlier stage of this discussion, and relying thereon for proof of the present position, it is only necessary to repeat the conclusions drawn from those arguments—namely, that real property should be assessed at its full market value, and that the rate of assessment should be progressive—that is, at certain well-defined stages in the extension of individual ownership the rate of taxation should be augmented.

A suggestion as to the most feasible and equitable method of taxation for the General Government is now in order. Let it be remembered that reference is here had solely to taxation, without respect to industrial imposts. The subject will be first treated in its general bearings, and then as applied to the present exigencies of the country.

This discussion disputes the feasibility of capitation and income taxes for the General as well as for the State Governments, and upon the same grounds. In respect to the sole remaining form of direct taxation—namely, a land-tax—there are two reasons which render it inexpedient for the Federal authority, except in extraordinary exigencies, to

resort to this method of obtaining revenue. That it has the constitutional warrant so to lay its taxes no one will for a moment dispute. Such power is expressly delegated to it by the Constitution. But as a land-tax has always been a favorite (and indeed the chief) method of the State governments for securing their revenues, a tax laid in a similar manner by the General Government would be, so to speak, a cumulative burden upon the same subject of taxation. It would, of course, be no interference with State prerogative. In the case of both State and Federal taxation upon the same parcel of landed property, the latter, as a matter of course, by virtue of our organic law, would require to be first canceled. But the fact of the inherent power of the General to override the State governments in this direction furnishes all the more reason why it should be chary of such action except in seasons of absolute necessity. There is, moreover, as already stated, an additional reason why the national authority should raise its revenues by some other means. The General Government is particularly and emphatically a creation of the people, and not a league of the States. The people are its parent, and to the people, instead of the States, it looks for maintenance and defence. It looks, moreover, to the entire people, and not a part; and there is a greater show of reason why the expenses of the General Government—the government of the people at large, their ultimate resort for protection and defence in case the local organizations of the States shall be subverted—should be canceled by a tribute from the entire masses.

In the great majority of instances, therefore, this discussion argues a system of indirect taxation for the General Government. It argues, moreover, that this taxation shall consist in a tariff upon such imported articles coming under the head of comforts and luxuries as are not produced in this country. It argues, again, in pursuance of principles hereinbefore enumerated, that the rate of such

imposts should be small on comforts and large on luxuries, as by this rule will the largest amount of revenue be raised from these respective commodities. It argues still further that save in the case of actual war or the payment of an enormous public debt this simple revenue impost will abundantly supply the wants of the General Government. It argues also that when such public indebtedness is in process of cancellation, the only means requisite to supplement such a revenue tariff for the purpose of enabling the Government to meet both its current expenses and maturing obligations is an excise-tax upon the luxuries, and possibly a very few of the comforts, which are produced within our own borders. Let it be remembered that the tariff above discussed is a revenue and not a protective impost. It is taxation, but not protection.

An application of these principles will now be made to the present status of the United States. As a legacy of the late rebellion we have a debt of about twenty-three hundred millions of dollars still unpaid. To meet the current expenses of Government, the demands of our pension list and the interest upon our public debt we require an annual revenue at the present moment of about \$250,000,000. In accordance with the genius, precedents and traditions of our institutions, a wise public policy requires that we reduce the amount of our indebtedness to the extent of \$50,000,000 per annum. For present exigencies, therefore, we stand in need of a yearly revenue of about \$300,000,000, without regard to the sinking fund required by law, as explained in the chapter of this treatise devoted to the discussion of "The Money and Currency of the United States." Every dollar of this sum can be realized from a revenue impost upon such imported comforts and necessities as are not, for the most part, produced in this country, supplemented by an excise-tax upon tobacco, spirits and fermented liquors of home production.

The proceeds of the sales of our public lands have heretofore been applied to the purpose above described, but the recent educational act of Congress has wisely mortgaged the future income of Government in this direction to promote the cause of the general education of the people.

Our revenue returns for the fiscal year ending June 30, 1872, already given in the aggregate, are pretty accurately stated in detail in the following exhibit :

Customs Receipts.....	\$225,000,000	
Internal Taxes :		
Spirits.....	\$50,000,000	
Tobacco.....	36,000,000	
Fermented Liquors.....	8,500,000	
Banks and Bankers.....	5,000,000	
Gas.....	3,200,000	
Stamps.....	16,000,000	
Penalties.....	500,000	\$119,200,000
Miscellaneous Sources.....		<u>31,000,000</u>
Total.....		\$375,200,000

By these statistics, with a provision for an annual reduction of our public debt in the sum of \$50,000,000, it is seen that our national revenue for the fiscal year just closed (1871-72) was \$75,000,000 in excess of our requirements. The tariff and tax bill adopted at the closing hours of the last Congress (June, 1872) contemplated the necessity of a reduction in the burdens imposed upon the people, but it did not go to the extent, nor accomplish its purpose by the most desirable means, which the circumstances of the country will permit and its exigencies demand. Its amendments of the former law are predicated upon a necessary reduction of \$43,000,000 in our national revenue—only a little more than one-half of the extent to which it should be curtailed—and its major inherent defects are as follows. It should have abolished our entire system of internal taxation, with the exception of the excise upon tobacco, spirits

and fermented liquors ; but instead of this it leaves a portion of the stamp-tax in existence, the most inexcusable of which is the burden upon matches, which yields a yearly revenue of nearly \$2,000,000, and other miscellaneous provisions, the combined returns of which (excluding the tobacco, spirit and liquor excise) will amount to fully \$10,000,000. These burdens should have been all removed. The framers of the law, moreover—notwithstanding the teachings of the last five years to the effect that lower rates of taxation upon commodities other than luxuries, as already explained, will afford a larger aggregate revenue than high ones—have made no allowance for the increased returns which the decreased excise of their new law upon tobacco, spirits and liquors will result in, and consequently have failed to make sufficient inroads upon our tariff system. The consequence is, that in the summer of 1873 Congress will be again astonished that by some supposed and unseen species of legerdemain its reduced rates of taxation have raised a revenue far in excess of its estimates. It is safe to predict that the receipts of the fiscal year 1872-73, instead of falling below the limit of \$320,000,000, as our law-makers opine, will nearly reach the sum of \$375,000,000, the extent of our present budget.

This miscalculation has led to the following errors of the new law in respect to our tariff policy. Some commodities which are the subjects of, and still demand, protection to the full extent of the old law, have been placed under a lighter duty. Of this class, iron, metallic wares and textile fabrics are the chief representatives. Other articles, again, which require no protection at all, and, moreover, are not proper subjects for a revenue-tax tariff, are still subjected to a heavy impost, and the free list, upon which should be found every commodity not produced in this country with the exception of luxuries, and perhaps a very few comforts, has not been sufficiently extended. It is neither practicable

nor necessary to enumerate these several classes of commodities. Of the articles which need no protection, as explained in the chapter upon tariffs, but the production of which the present law assumes to foster, wool, coal and lumber are the principal illustrations ; and as they are not luxuries, but the most ordinary grade of comforts, they are not proper subjects for a revenue-tax tariff. Of the commodities which should alone be subjected to such a tax tariff, wines, spirits, fermented liquors, expensive dress goods, etc. etc. are the leading exponents.

If this may be denominated "revenue reform," this discussion joins hands with "revenue reformers." This *is* revenue reform, but the offspring of the *so-called* revenue reformers is an entirely different agency. It strikes at every customs barrier at our ports of entry that guards our infant industries. It wars upon protection, and from such a policy this discussion must be unqualifiedly divorced.

PART IV.

REPRESENTATIVE GOVERNMENT.

PREPARATORY.

THE closing discussion of this work, like all the preceding ones, will be confined within the limits designated by the general title of the treatise. A full examination of the principles of representative government could not, of course, be placed within a smaller compass than that of an entire volume. Such an investigation is not here assumed. It is only a view of that portion of the science of representative government which in its application to American institutions gives evidence of inefficiency, coupled with a criticism of mooted, and suggestions as to needed, changes, that is here intended. In other words, the subject will receive an exposition simply as it helps to make up the issues of American politics—merely as it forms a topic of dispute in the American republic.

In leaving the economic inquiries which in Part III. engaged attention, we again enter upon a similar field of thought as that which in Part II. marked our exit from the economic discussions of Part I. The alternations are precisely similar in character, and, as stated in the Introductory, the order of the respective transitions was designed by the author for the purpose of affording an agreeable change to the reader, without doing violence to logical

precision or jeopardizing the possible benefits which may result from the perusal of the essays.

There are many minor points connected with this general subject which, by virtue of their intensely interesting nature, invite an acquaintance, but want of space forbids an examination of the general question further than was stated in the outset ; and the same reason will compel a regretted brevity in respect to the range of the comment which can alone be suffered. The list of sub-subjects which will receive an exposition are—The Elements of Representative Government ; Suffrage ; Minority Representation ; and the Centralization of Power. Of these in their order, and separately by chapters.

CHAPTER I.

ELEMENTS OF REPRESENTATIVE GOVERNMENT.

Governments are the Offspring of Experience, and not of Invention—
The Component Parts of Government—The Stages of Civilization in respect to Government—The Subject in History—The Elements of Representative Government are Founded in Education—They are Threefold—All Forms of Government in a certain sense Rest upon Consent—The Processes of Education which Lead to Representative Government—The Attendant Difficulties of—The Reason of Failures in Attempting to Adopt it—The Question viewed Philosophically—The Subject belongs to the Realm of Reason.

THERE is nothing more clearly demonstrated by the history of Christendom than the fact that governments are not the product of *invention*. Synthetically speaking, the component parts of government may be said to be—first, a general policy; and second, rules of action. The former is a guide by which the latter are to be framed and administered—an umpire to decide upon the rightfulness of law and its execution. It is, in short, a nation's conscience. The latter are ordinances for the control of individual conduct, whether public or private, personal or official. This general policy and these rules of action draw their character from the status of civilization. Civilization, for the purposes of government, passes through four *principal* reformatory stages—democratic,* monarchi-

* It may provoke a protest to see democracies designated as the most undesirable of governments, but such is not only the order of civilization, but also, to the author's mind, the teaching of history. Discussion of the point cannot here be tolerated. The digression would consume by far too much space.

cal, aristocratic, and republican or representative. In democracies the general policy and rules of action bear the impress of the *unbridled and irreconcilable* will of the masses; in monarchies the will of the monarch is the sole parent of both; in aristocracies they are shaped by the few to the exclusion of the many; and in republics by the *qualified* will of the entire people. The confusion of the first induces the second; the severity of the second leads to the third; and the enlightenment of the masses installs the fourth. The deplorable condition of ancient Athens, the miseries of Rome under Cæsar or France under Charlemagne, and the hardships of the English people under William of Normandy and his nobles, illustrate the first three respectively, while the present status of the English subjects partly, and that of the people of the United States more perfectly, stand as an exponent of the fourth. The elements or conditions of the form of government incident to the last stage of civilization—of representative government—is the subject of this immediate investigation.

The history indicated by the next preceding paragraph furnishes abundant proof of the truthfulness of its opening sentences, which, to give it in another form, amounts to this—namely, that governments are the results of *experience*, and not of mental creation unaided by the suggestions of the past. By this, of course, is intended such systems of government as will stand the test of time and the shock of social disorders. France, for example, has given to the world several instances of governments of pure invention, but they have crumbled to atoms upon the first onslaught of discontent. “The young live forward in hope—the old live backward in memory,” said Aristotle; and there are no possible words which can so fittingly and beautifully describe the fundamental principle of the task of framing governmental codes. The Grecian philosopher in a single apothegm unwittingly indicated the means of genuine

governmental progress. As John Stuart Mill tersely puts it, "Governments are not made—they grow."

The elements or conditions of representative government are all founded in education, and generally speaking they may be said to be threefold. They consist in the ability to compromise individual opinion and to defend and execute the agreements of such compromise. The excellence of a people's culture measures the success and perfection of representative government within their borders. Man in his savage state is but little better than a beast. It is simply because he is, as Aristotle terms him, "a reasoning animal," that he is lifted above the level of the brute creation. In the idleness or unemployment of reason, moreover, he is even more stubborn and unyielding than his brute subject. He will and he will not. Therein is his sole gauge of duty. In this simple fact springs the primal necessity of government. It essays to define the duty which the willfulness of man will not permit him to recognize, and to compel its execution, which, for the same reason, he will not voluntarily undertake. Now, the main essence of government for brute, ignorant man is power, while for educated man it is consent; and the more perfect the education the easier and wiser the consent. The former is government by outside agency—the latter is self-government; and this brings us to a brief amplification of the threefold elements or conditions of representative government already stated.

All forms of government may, in one sense, be said to be *founded* upon consent. In many instances, however, it is consent in a passive sense only—blind submission. In representative governments this is not the case. The element of consent is here active instead of passive. It antedates obedience. It creates by consent that which in the same manner it accepts as its ruler. The name of *representative government* fully conveys its nature. It is a compromise by the masses of their *absolute* freedom, to the

extent of allowing a few, chosen by all, to prescribe rules of conduct for the many, with the explicit understanding that the deliberations of the few shall be binding and entirely conclusive. The ability for such a compromise is not incident to the earlier stages of civilization. The untutored mind will never consent to such a delegation of power. It shrinks from exchanging *absolute* for *relative* freedom, simply because, in its ignorance, it is unable to see the superiority of the latter condition. How it can be better for him to voluntarily permit another agency than his own will to regulate his relations with others is something which the savage man cannot possibly appreciate. This is the obstacle which must, of necessity, be removed before the first condition of representative government can be asserted. The magnitude of the task can hardly be expressed in words. It is no insult to Omnipotence to say that the perfection of this compromising ability constitutes the dividing line between human and superhuman effort. It is the conclusive proof that man partakes of the image of his Maker—that he is “but a little lower than the angels.” It is the office of reason.

It is impossible and irrelevant in this connection to trace the processes of education by which this status is attained. It would involve a history of civilization, and the present purpose is secured by the statement that the first element or condition of representative government is such an education of reason as will enable it to see that self-government is possible, that man can govern himself, only when he can maintain a willingness to consent to the principle that the mass shall choose a few by whose ordinances all shall be bound. The period at which a community has attained to this position can only be judged of by comparison and decided by experimental effort. There are no infallible latent exponents of its existence. When reached, mankind is able to comprehend the words of William Penn, that

“life without liberty is slavery, but liberty without order is oppression.”

The second condition of representative government, as already stated, consists in the ability *to defend* the agreements resulting from that compromise of individual opinion which forms its primal requisite, and the discussion of which has just been dismissed. It is one thing to consent to an agreement, it is quite another to defend its wisdom. Man is imperfect. His reason is changeable and defective. It is easier to argue the feasibility of the future than to battle with the difficulties of the present. The imperfection of man taints every work of human construction. In some way the results of all his efforts will fall short of their aim. When these defects of human undertaking exhibit themselves, it is a signal for the onslaught of the entire forces of the disaffected—and such forces always have and always will exist; and it is a wholesome element of society, for it keeps the majority under constant bonds of honesty—against the wisdom of the entire scheme which gives evidence of only partial imperfection. The shock of all social disorders originates from just such conditions as are above described, and at this juncture, for the purposes of representative government, its second requisite is summoned to action.

It may respond to the call, and it may not, for it may not have an existence. It is at this point that experiments in representative government first give evidence of failure. The first stage is always easily compassed. Men are vastly more willing to agree than to stand by their agreements when they prove to be unexpectedly burdensome. It is a mere question of education, a problem of mental and moral philosophy combined. It demands the exercise of a rarer culture, a more mature judgment and a more infallible wisdom than is required by the first condition of representative government as already defined. It is one step in

advance thereof. Its attainment is alone secured by education, and largely by the education of experience. And not until mankind has so elevated its reason as to see that because all human means are defective, and every human effort, to some extent, abortive, the greater wisdom consists in abiding by the mandates of an imperfect law which they, *by their primal consent as to the form of government under which such law should be created*, have aided in enacting, until its legal repeal can be secured instead of resorting to force therefor,—it is not until then that community can be said to be possessed of the second element or condition of representative government. Such legal repeal as is above referred to is the revolution of thought, while the repeal by force is the revolution of war. The first is incident to real representative government—the last to the rule of the monarch and the usurper. Experimental effort here, as in the case of the first requisite of representative government, can only prove the possession of its second element or condition. It is undefinable by theory, and exhibits itself only in the presence of a practical test.

The third and last general element of representative government is the ability to execute the agreements resulting from the compromise of individual opinion. The thought extends itself over a wider compass than is indicated by the mere words of the foregoing proposition. The execution required is one of a double character—namely, *present work* and *future provision*. Motor-power for the immediate propulsion of the ship of state is not alone needed. The way for its onward passage must be cleared far in advance. The mariner who attempts to furrow the trackless ocean must ever watch for a channel of safety for his hidden keel, or founder upon the shoals and quicksands of the treacherous deep. The guardians of representative government—and, in certain senses, of all governments—bear the responsibility of a similar burden. This super-

visory foresight, so to speak, which is the main essence of the third element of representative government, is akin to prophecy, and is the *par excellence* of mental prerogative. It demands the highest order of culture, education and enlightened thought. It is, in short, statesmanship, and is an article of the utmost possible rarity. Saying nothing of men engaged at the present time in public life, the United States have not produced above a half dozen men who have shown a title to pre-eminence in this respect—Alexander Hamilton, Thomas Jefferson, John Quincy Adams, Daniel Webster, Henry Clay and William H. Seward.

This brief survey of the elements or conditions of representative government need not be farther extended. As stated in the outset, they are threefold, are founded in education, and each successive requisite demands a higher order of cultured thought. Their existence, let it be again repeated, is alone demonstrated by experimental effort, and their abode is the realm of reason.

CHAPTER II.

SUFFRAGE.

The Essence of Representative Government—Purity of Suffrage defined—The Requisites of Suffrage—The Unthinking Mind Erroneously looks upon Suffrage as an Abstract Right—It Rests upon Duty—Universal Suffrage, literally speaking, is Indefensible and Wrong—Suffrage defined—Its Office and Power—The Question of Education—The Proper Limits of Suffrage—Civilization has not yet Solved the Problem—Light Sought from the History of the Elective Franchise in the Old and New Worlds—The Question in a Philosophical Sense—It Depends upon the Peculiar Conditions of every Nation in Respect to Race, Climate, Traits of Character, Education, etc. etc.—The Proper Limits of Suffrage in the United States—The Difficulties attendant upon Clanship in this connection—Our Peculiar Status

considered—An Intelligent Suffrage our only Safeguard—Suffrage should be a National Institution—A Proper Scheme of Compulsory Education Suggested—The Benefits of such a System—The Position of the United States in this Respect a Critical One—The Hope that Intelligence will Reassert its Dignity—The Opinion of Theorists upon this Point—WOMAN SUFFRAGE—A Question entirely Distinct from Suffrage in General—Upon this Thought is Based the Whole Issue—The Real Scope of the Argument—John Stuart Mill Cited—Woman Suffrage Denies the Natural Condition of Woman as Ordained by God—It Defeats the Purposes of the Family—The Creator has not Indulged in Creation without a Purpose—Such Purpose is Stamped upon every Species of His Handiwork—Adam Ferguson Cited—The Distinguishing Characteristics of the Male and Female Creation—The Delicacy of the Point—Analogies Drawn from the Brute Creation—These Characteristics Designate the Peculiar Scope of Male and Female Duty—These Laws applied to Men and Women—Woman's Nature—Eminent Writers thereon—The Requirements of Suffragan Power are such that its Exercise by Woman Essays a Repeal of the Laws of God—The Assertion Supported by a View of Republican Politics—Pertinent Inquiries—The Question of the Family—Its Purposes are the Preservation of Morality and the Perpetuation of the Human Race—The Marital Relation—Society—Maternity—The Majority of Women Shrink from the Exercise of the Elective Franchise—Sexual Passion—Woman and the Ballot an Illegal Bridal.

SUFFRAGE is the main essence of representative government. It is not only its motor-power, but its ultimate safeguard. The endowment of suffrage, the privilege of exercising the elective franchise, the right to vote, sets the wheels of representative government in motion, and the *purity* of suffrage saves it harmless from outer attacks and internal dissensions. The term "purity of suffrage" in this connection has a very wide meaning. It is not *simply* an intendment of honesty, of the absence of fraud in the mere act of voting. This, it is true, is a feature of its purity, but the general principle covers a far wider—and perhaps it may be safely said, a far more important—field of thought. The idea, possibly, may be best appreciated

by abstract analogy. Purity itself has reference not to acts alone, but to the character of the agency which institutes the action. The bare act may be seemingly unobjectionable, but its author may be an absolute libel upon virtue. The mere exercise of the power may appear entirely defensible, but the motive which prompts it may be unqualifiedly wrong. The deduction is, that purity contemplates not only the probity of the act, but also certain elements in the actor which are susceptible of a perfect and combined definition in the use of the word *fitness*. This idea of abstract purity attaches itself to the principle of a pure suffrage, and the latter stands as an exponent not only of an honest voter, but also of one who has the necessary elements of fitness.

This preliminary comment opens the door to the main investigation, which will be conducted under the following sub-subjects—namely :

- I. The Requisites of Suffrage ;
- II. The Proper Limits of Suffrage ;
- III. Woman Suffrage.

Of these very briefly, and in the order above named.

I. THE REQUISITES OF SUFFRAGE.

The unthinking mind has been accustomed to look upon suffrage as an inherent, natural *right*, unqualified by anything except the simple element of age. It has regarded it, so to speak, as an indefeasible estate *in futuro*, for the vesting of which, unqualifiedly and for ever, there was nothing necessary but a certain arbitrary limit of time. The toleration—yes, the encouragement—of this idea has generated a cancer which has destroyed earlier republics than ours, and which is gnawing its way to the vitals of the body politic of the United States. And although it may not—probably will not—compass the death of the republic, its presence will always greatly impede its progress, and asso-

ciate the representative government of our country with inefficiency and corruption.

This discussion most emphatically denies the soundness and tenability of universal suffrage—a suffrage (not including woman suffrage) which, with the two exceptions of age and ordinary character, has no regard for the qualification which naturally, reasonably and logically is an absolute prerequisite of its proper possession. Suffrage, in the abstract, *is not a right, but a mere privilege. It is based upon duty, and the discharge of such duty alone transforms the privilege into a right.* The nature of this duty and its discharge, and the requisites of suffrage, are synonymous questions. A discussion of one is a discussion of the other, and the same will now receive a more direct attention.

The gist of the inquiry will be best initiated by an abstract definition of suffrage. We cannot determine its requirements until we ascertain its elementary nature. Suffrage is the privilege of an expression of opinion by ballot upon a matter of public dispute, with the sequential results that each ballot has an exact numerical power for the decision of the mooted point, and that the majority of the gross number of ballots cast settles the question at issue. It may be said, indeed, without any use of the metaphor, that suffrage is the concretion of individual opinion for the creation and execution of public law. This concretion of opinion asserts itself in a twofold manner—mediately and ultimately. Mediate, in the choice of public officials; ultimately, in the sanction of proposed public measures, such as taxation for giving public aid to private enterprises, the ratification of proposed constitutional changes, etc. etc. In all cases, however, the final end of the exercise of the elective franchise is the creation or execution of law, and incidentally of the administration of justice in legal tribunals. The ballot chooses the legislator, and the legislator frames the law; the ballot elects

the executive, and he executes the law ; and the ballot, either through the appointment of the executive which it elects or its own direct choice, chooses the judicial officers who are empowered to administer justice.

These offices of suffrage are suggestive of its true conditions. A moment's reflection is sufficient to show not only that the exercise of the elective franchise involves the employment of a delicate, intelligent and comprehensive discrimination, but also that such exercise of the voting power shapes the destiny of every country which adopts the policy of representative government. It is, indeed, the most important—yes, the most sacred—trust which can be reposed in the keeping of a republican people. It is something more than mere citizenship. It is immeasurably greater and higher. The one under our form of government is a naturally inherent right, and attaches *nolens volens* to all humanity concurrently with its birth—the right of protection to life, liberty and property. The other, as already stated, is a privilege transformed by the performance of duty into a right—the right to establish and execute law.

Now, the primal requisite for the fulfillment of this sacred trust is education, and yet, strange to say, the American republic, contrary to all precedents of either public or private success in analogous circumstances, ignores this fundamental condition entirely. There is not an instance of private policy, from walking the tow-path of a canal to the superintendence of the delicate machinery of finance or the practice of the liberal professions, in which a certain degree of *acquired fitness* is not demanded of the one who essays the performance of these simple and intricate trusts. The canal-man must know how to drive a mule, and the banker or professional man must have a knowledge of the nature, uses and offices of money or the theory and practice of his profession. This requirement of fitness in private

undertakings is a simple compliance with the mandates of natural law. *In every avenue of success knowledge must precede action.* The exercise of the elective franchise constitutes no exception to the general principle. Is it wrong to demand that the agent who shall prescribe and execute the rules of action for a people, who shall shape its internal and foreign polity, shall be possessed of a reasonable knowledge of what the necessities of such polities demand? On the other hand, is it not lamentably and inexcusably culpable that, as in the United States, the simple semblance of honest manhood, however ignorant, is the only fitness required for a full exercise of the suffragan power?

The immediate proposition that education is the primal condition and requisite of suffrage will not be further amplified. It seems wholly unnecessary. The only corroborative support it requires is a simple appeal to reason and ordinary judgment. Both the objections to the proposition and its proper limits—the degree of education necessary—find an appropriate place under the next sub-subject.

II. THE PROPER LIMITS OF SUFFRAGE.

What *are* the proper limits of suffrage? The question is one which the future of civilization must solve. The past, although it sheds light upon the onward pathway, has by no means attained the goal. If we trace the history of the elective franchise through its principal stages, the Greek, Roman, English and American, we find it crippled by inefficiency, tainted with corruption and a companion of injustice. One of the chief difficulties which surround the problem is found in the fact that suffrage is not responsive to the principles of absolute science. Rules for its regulation cannot be established which would be equally pertinent to all countries and peoples. *Its abstract condition is always the same*—education, knowledge, enlightenment—

but the elements with which it is brought in contact are totally dissimilar and constantly varying in their incongruity of character. The geographical position and territorial extent of nations, the habits and customs of peoples, the status of a nation in respect to age, the pursuits of a country's inhabitants, the temperament of races, the effects of climate,—all these present collateral forces so far from universality in respect to character which the law of suffrage is obliged to appreciate and reconcile, that absolute rules for its universal guidance are not only unadvisable, but wholly impracticable. The kingdom of Italy, with its comparatively restricted area, could tolerate a suffrage more universal than Russia with its gigantic proportions; the vivacious and volatile French demand a suffrage far more restricted than the cool and stolid Saxon; the old Swiss cantons can submit to a suffrage far more general than the young republic which might be reared upon the territory of unhappy Poland; the Neapolitan peasantry would require a suffrage much more curtailed than the merchantmen of Holland; while the mutinous temperament of the Celt, the dreamy carelessness of a Southern Italian and the excitable denizen of the Tropics would stand in need of a suffrage more limited than the stolid Dutch, the thinking American and the resident of the North Temperate Zone.

The future exploits of civilization may so compass these difficulties that a cosmopolitan system of suffrage will be one of the products of its labors, but we gravely doubt it. Like the topic of meteorological inquiry in the past, it has never been reduced to the limits of pure science for reasons above stated, but, seemingly unlike it in the future, there appears to be no hope or possibility of its assuming a scientific status, while meteorology bids fair to arrive at that position. The result is, that for the present, and probably for all time, every nation which adopts a representative form of government must establish a suffrage adapted to its

own peculiar conditions and requirements. It is something which must ever be subject to the force of local natural law. The advocate of universal suffrage here interposes the plea that his system cuts the Gordian knot and dissolves the difficulties above enumerated. By no means. It disregards the difficulties; it evades them, shuns them, but does not solve them. This discussion grants the universal suffragist this much—namely, that when the difficulties heretofore enumerated shall have been removed, his system will be the only proper and correct one—that the nearer civilization approximates to their removal, the farther may suffrage be extended. But we augur, however, that that era is incident to such a perfection of humanity as will never be attained this side of the great Unknown. Its advent would note the dawn of the millennium.

The general proposition, then, is that the limits of suffrage at present, and probably for all time, must be designated by every nation which adopts a representative form of government. The remaining inquiry in this connection alone pertinent to the present treatise is, What are the proper limits of suffrage for the United States?

The organization of society and government is based upon certain fundamental conditions, the most paramount of which is individual sacrifice. Without such sacrifice both social and governmental regulations, in practice at least, if not in theory, are absolutely impossible. The principle asserts itself in the earliest stages of social organism. It even antedates the formation of the family. The simple clanship of any two individuals, in mere relations of friendship even, requires a sacrifice of what may be best termed individuality. Tastes, habits, temperaments and idiosyncrasies are never alike in any two individuals, and their continued association is only the result of compromise. This element of individual sacrifice, which begins with dual clanship, is augmented with every increase of associ-

ated numbers. It is greater in the family than in the clan; greater in restricted society than in the family; and greater in the entire assemblage of human brotherhood living under one government than in the narrower social relations of which the vast whole is composed.

Carrying this general principle to its natural and logical sequence, if we apply it to suffrage the deduction plainly is, that there must be personal sacrifice here as in all other social or governmental relations. In other words, it cannot be universal. And here, moreover, as elsewhere in the framework of society and government, in the conduct of either private or public affairs, the greatest advancement of the general good, the greatest promotion of the main object, must measure the extent of the sacrifice. And still further, as already intimated in a prior connection, the avenue of escape from this individual sacrifice in respect to suffrage is found in fitness.

By these aids let the main question now be grasped: What are the proper limits of suffrage in the United States? Let us scan for a moment our peculiar position. In point of territory we are among the foremost nations upon the face of the earth living under a representative form of government. Considered, as we are, the freest people in Christendom, our borders are a magnet for the attraction of immigrants from all quarters of the globe, many of whom are deplorably ignorant, and many of whom represent the lower orders of civilization. Our habits are intensely active and absorbing, our country is in its infancy, and our extremely mixed population, coupled with our wide latitudinal range, renders our race-temperament of the most diversified and unmergeable character. All these present insurmountable difficulties to the adoption of universal suffrage. The status of our immigrant population alone refutes it; our vast expanse of territory, in its growing unwieldiness, alone denies it; our youth leaves us unpre-

pared for it, and our race-temperament stamps it as an unqualified absurdity.

Where, then, shall the line be drawn? There is but one answer to the interrogatory: It must be drawn upon a basis of education. We cannot reconcile the irreconcilable; we cannot merge the unmergeable; we cannot universalize the incongruous; therefore justice must be done to all, and *fitness* govern to the exclusion of all other agencies. By a basis of education, moreover, we do not argue an apology therefor. We would not lay down an educational rule which would be a mere libel upon intelligence. The mere ability to read and write for purposes of suffrage is, in many instances, precisely such a libel.

In defining the exact limits of suffrage upon an educational basis we are met at the outset with an obstacle of constitutional import. Our organic law leaves the regulation of suffrage, for the most part, in the hands of the States. That the several States would ever agree upon a uniform system is not, for a moment, to be anticipated. It were seemingly far better that an institution which is the very foundation of our national organism, the main essence of representative government, as suffrage is, should be under the exclusive regulation of national authority. Such, indeed, was the firm opinion of many of the best minds of the Constitutional Convention. The matter was finally placed under the control of State authority, as one of the means for saving the overthrow of the project of constitutional reform. It was one of the compromises between Federalism and State rights by which our present Constitution was substituted for the Articles of Confederation. The immense expansion of our territory and the almost measureless diversification of our population since the adoption of our national charter, however, are not only sufficient but imperative reasons why the opposite course should be now adopted.

With a change in our organic law placing the regulation of suffrage under the exclusive control of national authority, we may well look to the German empire for instruction as to the next step for properly protecting our elective franchise. A national system of compulsory education should follow such a change, making the minimum limit thereof a degree of intelligence at least equal to that which will suffice for admission to the best grade of our institutions known as academies. All of our educational schools, moreover, below that grade should be required to issue certificates of graduation, and not until applicants for the exercise of the elective franchise could furnish these conclusive evidences of their fitness to enter the higher grade of institutions above named should they be endowed with the trust.

The point will be at once raised in this connection, that the scheme would work hardships in the first stages of its operation. Doubtless. But better individual hardship for a time than jeopardy of national existence. Self-preservation is the paramount law of public as well as private policy, and justice properly precedes generosity. Make the application of the rule inexorable *to all classes*, and no plea of personal hardship would be possessed of sufficient dignity to prejudice the scheme.

The additional point will be made that such a scheme of suffrage tends to the unwarranted centralization of power in the national Government. Of this in the concluding chapter of the treatise.

Limited space forbids an examination of the benefits which would result from such an institution of suffrage. One, however, deserves a passing mention. It is this: Intelligence, comparatively speaking, never sells its vote. It stands upon its manhood, and votes upon its convictions. Ignorance, on the other hand, pursues exactly the opposite course. Its ballot, like its labor, is for sale to the highest bidder; and herein is found the most potent agency of

political corruption. It could poorly maintain its ground with educated voters, and would ultimately sink into irretrievable ruin.

Within these designated limits of a proper suffragan policy no mention has been made of women. That branch of the discussion stands upon grounds entirely distinct and peculiarly its own, and will shortly receive attention.

At a time when almost every restraint has been removed from the right to exercise the elective franchise—when, with the exception of women, our constitutional seal has been set upon a system of suffrage wellnigh universal—it may seem argument to no purpose to advocate a rigid institution of intelligent suffrage. Possibly. Reforms, we are told, never move backward. Undoubtedly not. *Change, however, is not always reform.* The test of the latter is time. Future years may present such exigencies as will fully commend the wisdom of such an institution to the judgment of the American people—nay more, may imperatively demand its adoption. Our universality of suffrage has as yet by no means proved the rightfulness of its claims. On the other hand, it has been constantly working its forfeiture. It has wedded corruption to our politics in general; sold the State of New York, through its venality for years, to a clan of adventurers; and by its ignorance plunged the Southern States since the close of the rebellion into a state of public embarrassment, dishonesty and official theft, by the side of which even the evils and woes of civil war pale into insignificance and contempt.

We stand by no means upon the solid rock of representative government. Our public polity is far from a state of perfect security against the onslaughts of discontent. Its corner-stone is ignorance. *Its principle of suffrage is purely the result of a false sympathetic sentiment.* It sprung from a desire to do justice to an oppressed and

woefully-wronged race, but it overstepped the bounds of reason. In essaying justice it has worked injustice; in proclaiming virtue it has sown corruption. When successive years shall have brought their annual gatherings of its folly and laid them at our feet, when the moment of an earnest yet unwholesome public sympathy shall have given place to one of reflection and reason, when experience shall stand in the room of blind prediction, then it may not be too much to hope that intelligence will reassert its dignity; that our elective franchise will be divorced from ignorance; that our institution of suffrage will be placed upon its only sure and true basis—Education.

One more word of collateral comment before the next sub-subject shall engage attention. Theorists urge that the possession of the right to vote is an all-sufficient guarantee that intelligence will be diligently sought by the voter—that suffrage induces education. Among the supporters of this proposition is found no less an authority than John Stuart Mill. We answer him and his fellow-thinkers upon this point, with all due respect, by a simple recourse to one of the most common instincts of a common humanity. Mankind, so far as labor is concerned, seldom indulge in acts of supererogation. That which they can constantly obtain either with labor or without, they always take by the latter method. *That which they can honestly hold without effort, they will not put forth effort to save.* Suffrage forms no exception to the general principle. There are of course exceptions, where a taste for learning would induce intelligence in any event, but these exceptions are rare and uncommon when viewed in relative comparison with the masses.

The other grounds upon which Mr. Mill argues universal suffrage are more appreciable. Like all authors, Mr. Mill writes, for the most part, from a home stand-point, and as to the main question the positions of England and the

United States are almost totally dissimilar. The people of England, comparatively speaking, are all Englishmen, and her territorial area is very restricted. The people of the American republic, on the other hand, are made up of representatives of every nationality, and its territorial expanse is colossal. By the force of these reasons England might tolerate universal suffrage, while the United States could not.

III. WOMAN SUFFRAGE.

The question of suffrage for women is one wholly distinct and separate from the subject of suffrage in general. It rests upon a peculiar footing of its own. These statements, perhaps, demand a word of qualification. The advocate of woman suffrage will doubtless give them a prompt and unqualified denial. The opposite position is indeed the foundation of his entire argument. Upon his claim that no discrimination should be made between the status of men and women in respect to suffrage rests his entire plea for giving the latter the privilege of the elective franchise. It is the sole key to his position. This discussion, however, denies the soundness of the doctrine of woman suffrage, and, like its opponent, bases its argument upon one single, generic proposition—a proposition which is the exact opposite of the fundamental claim of the advocates of woman suffrage—namely, that a discrimination is imperatively demanded, by every principle of reason and public and private policy, between the status of men and women in this particular. Hence the opening sentences of the present paragraph.

The true compass of the argument, either for or against, is embraced by these simple and easily-appreciable limits. In view of this fact it is surprising to note the broad range which the discussion of this delicate topic has in many instances assumed. The fundamental point has been very

often entirely ignored, and the line of reasoning carried entirely outside of its real, legitimate limits. John Stuart Mill, the Nestor of woman suffrage advocacy so far as the subject in respect to polemic inquiry is concerned, most admirably appreciates the entire position. Starting with the cardinal doctrine that there should be no discrimination in status between men and women for the purposes of suffrage, he brings all the endeavors of his clear, incisive logic and elegant rhetoric to the single task of maintaining that fundamental principle. And it is all there is to the affirmative of the question. Prove that one point, and you prove all. Demonstrate the unwisdom of such a discrimination between men and women as we have before remarked, and you substantiate the wisdom of their endowment with the right of suffrage. For this task Mr. Mill only occupies five pages of his discussion of the general subject, and in those five pages he says all that can be said with an eye to relevancy—says it clearly, elegantly and well.

A discrimination is imperative between men and women in respect to suffrage, whereby the latter should not participate in the exercise of the elective franchise, for two reasons. First, the principle of female suffrage denies the natural condition of woman as ordained by God; second, it defeats the purpose of the family, and thereby saps the foundations of civilization. Of these in their order.

First. The common Father of humanity has not indulged in animal creation without a purpose. Every distinguishing feature of his creatures was established for the attainment of special ends. In respect to what these ends and purposes are, God has not left mankind in a state of uncertainty. He has revealed them as plainly and conclusively as though engraven by an inspired pen upon the sacred pages of Holy Writ. These revelations are laid in the medium of natural law and demonstrated by voluntary action. They are to be found in the inherent instinctive

tendencies of animal life. As Adam Ferguson most beautifully puts it, "Every animal is made to delight in the exercise of its natural talents and forces: the lion and the tiger sport with the paw; the horse delights to commit his mane to the wind, and forgets his pasture to try his speed in the field; the bull even before his brow is armed, and the lamb while yet an emblem of innocence, have a disposition to strike with the forehead, and anticipate in play the conflicts they are doomed to sustain. Man, too, is disposed to opposition, and to employ the forces of his nature against an equal antagonist; he loves to bring his reason, his eloquence, his courage, even his bodily strength, to the proof. His sports are frequently an image of war; sweat and blood are freely expended in play; and fractures or death are often made to terminate the pastimes of idleness and festivity."

Apply these thoughts to the separate natures of manhood and womanhood, and let the application be induced by a consideration of male and female characteristics and tendencies in the abstract, without confining the thought to men and women. The theme trenches upon a delicate ground, but such delicacy by no means stamps it as inviolate to the approach and acquaintance of honest investigation. By virtue of a natural law which is as changeless and invariable as the movements of the solar system, from the lowest order of the brute creation to the highest type of animal existence—Aristotle's "reasoning animal," man—the male species are found to be the depository of procreating power. By virtue of a minor law, moreover, which is equally immutable as its chief, the possession of this power is always supplemented by a trenchant, combative force, which may be best termed aggression. On the other hand, by reason of similarly undeviating natural laws of a major and minor character, the female species have ever been designated as the physical guardians of

embryo life, accompanied perforce by a necessary but yet withal a perfectly natural, inherent, instinctive trait of retirement.

These moral forces, as they may be fittingly termed, not only indicate, but they have ever worked, a natural assignment of male and female duty (and we are not yet confining our discussion to men and women). The male lion or tiger not only instinctively explores the forest in advance with tentative battle in quest of food for his savage young and their mother, but as voluntarily springs to the front to defend his subterranean castle and family against the attack of an invading foe. The full horse, when left to his native wilds, is always proud to lead the advancing march across the unknown prairie or thicket unexplored, and the male bird fearlessly heads the fight against the falcon, while the female summons the infant brood beneath the shelter of her protecting wings.

If we now pass from this view of these moral forces of the male and female species to one of their mere physical characteristics before proceeding with our original application to men and women in particular, we find that the same general principle asserts itself. The male is ever the representative of physical strength and enduring power, while the female is always an exponent of relative weakness and non-combative force. Each, in short, is "made to delight in the exercise of its natural talents and forces."

With this introduction let the fundamental proposition hereinbefore maintained, and which, for the most part, is so elegantly couched in the words of Mr. Ferguson just cited, be directly applied to the distinctive characteristics of men and women.

Literature is the repository of convictions—classical literature is the storehouse of the observations of the world's best intellect; all are, in one sense, history, and history is the primal proof of the past. Let us see, in the outset of

this immediate inquiry, what the muses and bards of history say concerning woman. Said England's muse—

“Oh let not woman's weapons, water-drops,
Stain my man's cheeks!”

“Her voice was ever soft,
Gentle and low—an excellent thing in woman.”

“How easy is it for the proper-false
In women's waxen hearts to set their forms!”

Said Thomas Otway :

“O woman! lovely woman! Nature made thee
To temper man; we had been brutes without you.
Angels are painted fair to look like you.”

Said Mr. Ledyard: “I have observed among all nations that women, wherever found, are the same kind, civil, obliging, humane, tender beings, inclined to be gay and cheerful, timorous and modest.”

Now, these are neither mere expressions of sentiment nor figures of rhetoric. They are the testimony of some of the most brilliant minds which Christendom has ever produced in respect to the natural talents and forces of woman, as ordained by God. The evidences of a distinctive nature in the male and female orders of creation, already alluded to, are peculiarly marked and emphatic in the case of men and women. Man is an exponent of aggressive, combative power—woman a representative of retiring, preserving force. Their inherent, instinctive tendencies furnish abundant proof of the ends which Omnipotence designed to secure in their creation. The voluntary choice of pleasure and duty which each is ever prone to exercise illustrates both the peculiar forces with which they are endowed, and also the purposes which they can most fittingly serve. The boy instinctively finds his sport in angling, the bat and ball, sham horsemanship and precocious mimicry

of war. In all his boyish games, moreover, he is daring, boisterous, ostentatious and the insignia of uncompromising noise. The girl, on the other hand, as naturally seeks her pastime in petting her doll-formed babe, laying her mimic tea-table for imaginary guests and arrogating to herself the dignities of womanhood. And in all her girlish pleasures she is coy, timid, embarrassed at exposure, and a slave to modesty and retirement. The one, still further impelled by this same natural law of his being, chooses his vocation at the plough, forge, counter, mart and forum, while the other as intuitively employs her hand and faculties with the needle, pencil, instruction and the duties of domestic life. The sports and duties of manhood and womanhood, moreover, are but an augmentation of boyish and girlish glee and toil.

Pass now to the conditions and requirements of suffragan power, and see if they are such as will naturally enlist the volunteer talents and forces of woman as hereinbefore described—such as their contemplation and execution will afford her profit and delight.

Politics, however much it may be tempered, calls for the exercise, both physically and mentally, of the strongest and highest grade of combative power. It is a war of opinion, it is true, as distinguished from a contest of mere animal strength, but it is such a peculiar warfare of ideas that it summons its forces from the reserve of both intellectual and physical resource. A war of religion will outstrip it in point of bitterness, but with this single exception there is no clash of individual or associated tenets which draws so heavily upon the latent strength of mind and body as the wager of political issues. The reason is manifest. The decision of the struggle is fraught with results of the gravest possible import to both the community at large and the private individual. But this is not all. There is another element of political strife peculiarly incident to representative forms of government which demands consideration in

this connection. It is this. So long as the policy of self-government shall be pursued, there will be very many opportunities for personal aggrandizement growing out of its conduct and supervision. It is one of the seemingly irremediable evils of a representative system. Great reforms in this direction are, of course, possible, but even when reform shall have been carried to its utmost limit, this avenue of individual ascendancy will not be wholly closed. It is an evil from which a republican system can never be entirely divorced. It is idle folly to expect it. Imperfection, not purity, is the dominant attribute of mankind, and opportunities for private elevation, however few in number or insignificant in character, will ever be hotly contested, not alone by the few, but by the many.

These political entities render the business of republican politics not only wearisome to the body and irksome to the mind, but they enlist in the struggle the strongest passions of mankind. Look at the matter in the most favorable light we will, having full regard and making due allowance for the beneficial results of a representative system, and with a frank and hearty concession that it is the most perfect form of government ever devised by man, yet we cannot escape the conclusion that its management is inseparably connected with the worst and most pronounced passions of human nature.

The argument is, of course, raised in this connection that these objectionable features, while they may be truthfully charged as incidents of politics in general, do not attach themselves to the mere exercise of the elective franchise. Most assuredly they do. This very office is the source from which the entire political current takes its origin. As already stated in a prior connection, suffrage is the motor-power of representative government. The stream cannot be separated from the fountain without destroying its identity. Suffrage, the fountain-head of republican politics,

cannot be walled off, so to speak, from the main political current without disintegrating and destroying the entire republican system. It is an inseparable estate, and the defects of the one are the defects of the other.

A moment's reflection will abundantly corroborate the statement. As votes constitute the vehicle upon which individuals ride to official distinction, the possessor of every ballot is the first objective point of the seeker of political preferment. These place-hunters are "plain, blunt" men. They are but slightly troubled with modesty, and no rule of conventionalism or courtesy would be adequate to bar their approach to even the most timorous classes of female voters. With every recurring canvass they would be subjected to all of the impertinent and questionable importunities for their votes with which republican politics ever has been and ever will be associated, and dragged *nolens volens* through all the mire and sloughs of a political campaign.

But this is not all, nor an equal part. The right of suffrage does not end with voting. Voters will be voted for, or, rather, they will essay that distinction. Denial of this last statement is entirely useless. The woman who has a taste for voting, who takes delight in the exercise of such a power, has the concomitant relish for holding office. There is no escape from the conclusion. If we look at the present list of female claimants for the privilege of suffrage, we will find that the entire number, without a single exception, desire to vote simply because they desire to be voted for. With the ballot in their possession, then, they are reduced—that is, all of them who would ever attend the polls—to the blatantly vulgar and indiscriminate scramble for office which, of necessity, characterizes republican politics.

The inquiry is now pertinent: Are these habits, customs, duties and offices such that woman, for their performance, would take delight in employing the talents and forces

already described which distinguish her sex from the male portion of community? Are they in consonance with the inherent modesty and retirement of genuine womanhood? Do they open a fitting field for the exercise of the peculiarly dependent nature with which, as a general rule, God has characterized this portion of the human family? Are they in keeping with her traditional loveliness and gentleness? Is even the maintenance of her purity, virtue and chastity possible when thrown into such associations and surroundings? Are not, in short, the requirements of suffrage totally opposed to the nature of the agencies, forces, talents and powers with which alone God has endowed woman? Do not, indeed, its demands call upon her to stultify her nature, tastes, instincts and desires? Is not, in fact, their performance entirely inconsistent with her physical weakness? *Is not the exercise of the elective franchise a traducer of the natural elements of her creation?*

The plea is here interposed that all these impurities of politics will be diminished, if not wholly removed, by the institution of female suffrage. Not at all. Allowing, for argument's sake, that the generality of women would vote were they possessed of the privilege, the race of personal aggrandizement, with its corrupting and enervating tendencies, would by no means slacken its pace. On the other hand, it would welcome the new order of things as an additional agency to accelerate its speed and make easier the pathway of ascent. Wherever representative government exists this objectionable feature of politics will ever cling to its skirts, until the human shall become superhuman, until imperfection shall robe itself with purity. Woman would be powerless to cleanse this Augean stable of its impurity, but would become contaminated with its corrupting influences instead.

The attempted institution of woman suffrage, in short, is but a simple effort to reverse the order of natural law. It

is a contradiction of God's ordinances, and an erroneous interpretation of His revealed will as seen in the talents and forces which He has attached to womanhood. These ordinances of Omnipotence man is powerless to repeal. They may suffer violence by his indiscretion, but their abrogation he will never compass, for their foundation is beyond his reach.

Second. Woman suffrage defeats the purpose of the family, and thereby saps the foundations of civilization.

Upon this remaining point very little need be said. Very much of the immediate preceding comment is applicable to this inquiry. The brief discussion of the general proposition will proceed in the inverse order of its statement.

The first and last step from barbarism to civilization is laid upon the foundation of social organism. Clanship is the herald of its advent, and the family is the ultimate guardian of both its existence and progress. Ancient and modern history confirms the statement. Wherever the family has existed the badges of civilization have been ever apparent. And wherever its sanctity has been most respected the foothold of civilization has been the surest and its advance the most rapid. In republican countries this is particularly the case. Representative government, self-government, *is based upon self-fitness*. Man cannot govern himself in the absence of either intelligence or moral convictions. Both of these entities are incidents of the family. It emulates the one and is the natural parent of the other. The position is too clear to admit of doubt or require argument to prove its truthfulness. Its correctness, indeed, is a point of universal concession. With this point conceded, that upon the preservation of the family rests the safety of civilization, the sequitur is not susceptible of honest denial that the destruction of the family is the jeopardy of civilizing tendencies. The destruction of the family, moreover, lies in the thwarting of its purposes; and this last is one of

the ends of woman suffrage. A brief view of the purposes of the family, coupled with an implied citation of female attributes, hereinbefore described, will furnish abundant warrant for the assertion that such is the result of woman suffrage.

The purposes of the family, although manifold if enumerated in detail, are reducible to two generic heads—namely, the inculcation and preservation of morality, and the augmentation of the species. It is unnecessary to paraphrase these generic propositions. The bearings of the first are wellnigh wholly covered by the spirit of the scriptural teaching that the marital clanship of men and women is the primal safeguard of public morality. The direct essence of this marital relation is the confidence of affection, and its natural, imperative condition is the total removal of all the incidents of its sacred duties, privileges and trusts from the gossip and scrutiny of the outer world. Everything which trenches upon this condition of the marital state tends to destroy the confidence which is the primal element of the relation. The security of both is at present surrounded with enough of difficulty. Their inviolacy is almost an impossibility. The marital joinder of one man and one woman for life, sanctioned as it is by God, indorsed by mankind, and alone tolerable for the genuine purposes of society and civilization, is not a union which is or ever can be entirely free from moral and social difficulties and embarrassments. The differences of humanity will not permit it. Like all living in pairs, like all clanship, its successful continuance is the result of compromise.

Passing now to the second generic head of family purpose, as already stated, the discussion grasps the keenest trial and most sacred sphere of womanhood—maternity. The slightest comment upon the nature and associations of this delicate office is almost an act of violence. We will intrude upon neither the keenness of its sufferings nor the

sacredness of its trusts, but let the eloquence of a silence to which its duplex nature of delicacy and suffering most emphatically entitles it plead for its total divorcement from the exacting and trenchant duties of public life, as well as from the more excusable approach of honest investigation.

Marry now, if you will, these purposes of the family to politics through the agency of woman suffrage, and how long will the first withstand the perils of the bridal? Link, if you will, the public and exposed duties and associations of the one to the imperative seclusion of the other, and how long will the sacredness and inviolacy of the last form an element of the joinder? Merge, if you will, the passions, the bickerings, the strifes, the vulgarity and the bitterness of politics with the tender relations of family affection and confidence and the holy toils of maternity, and how long will the institution of the family preserve itself? how long before this corner-stone of civilization will crumble to ashes beneath its unnatural burden? It would wilt, like the tender plant which it is, beneath the scorching heat of the atmosphere of its new associations. History attests the statement, and sets its seal in advance upon the correctness of the prediction. Let the doubter look to the status of almost any family wherein its female head has clamored for the right of suffrage, and read his answer there.

There are two collateral points which demand a passing notice before the present chapter shall be brought to a close. They are these: First. Woman suffrage, in view of the element of sexual passion with which Omnipotence has characterized both man and woman, would give representative politics a send-off for a lower plane of corruption than that which it now occupies, if it did not, indeed, work its total annihilation. Second. Women, as a sex, protest against their endowment with the elective franchise. Of these but a single word.

We cannot escape the conclusion of the first statement, either by blank denial or the allegation that it is a libel upon the purity and virtue of humanity. It is not. It is, in one sense, a lamentable truth. Granting the ascendancy of purity and virtue in general, the stubborn fact still stares us in the face that in all planes of social organism this element of sexual passion, to some extent, oversteps the limits of both moral and human laws. Politics and politicians are no exception to the rule, and with the institution of woman suffrage this element of sexual passion would generate the most formidable engine of bribery which has ever made an impress upon our political annals. Let the skeptic reader spend a winter in Washington and note the habits and success of women-lobbyists if he wishes his doubts removed.

Upon the last collateral point above stated the bare assertion needs no support. In all the years in which the advocates of woman suffrage have urged their claims the great majority of women have indignantly denied the forced inference that they lent their endorsement to the scheme. They have not and do not, and the opposition is more pronounced and extended to-day than when the theory first invited public sanction. The scheme must fail. It rests upon a foundation insecure. It traduces the order of Nature and contradicts the law of God.

CHAPTER III.

MINORITY REPRESENTATION.

The Question as Connected with Republicanism—The Same in Reference to the Will of the Majority—Minority Representation Defined—The Legitimate Scope of Suffrage in this Connection—How Majority Representation works Disfranchisement—The Primal Claim of Minority Representation—The Same as seen in Legislation—Majority Representation Proscribes Intellect—Also Fosters Class Legislation—How Minority Representation would obviate these Difficulties—The Means of its Adoption—Cumulative Voting Considered—Thomas Hare's System the Best ever Devised—The Same Simple, Effectual and Impartial—Fully explained.

AS both the motor-power and means of defence for republican forms of government rest with the suffrages of the people, the purest republicanism is that in which a representation of the entire people is most perfectly secured. The question of suffrage in the abstract is one thing, but the regulation of suffrage, so that its exercise shall in all cases affect the construction and operation of governmental machinery, is quite another. From the earliest periods of democracy and republicanism the application of suffragan power to the direct purposes of government has, for the most part, been made with respect to the principle that the will of the majority should be not only supreme, *but exclusive*. The principle is partially right and partly wrong. Generally speaking, in so far as it requires that the will of the majority should be supreme, the doctrine is eminently sound and wholesome, but in respect to the element of exclusiveness it is wholly untenable. The exact limitations of its supremacy will fully appear in the following remarks, which will have to do with the subject naturally suggested by these preliminary statements—namely, Minority Representation.

Minority representation finds an effectual expounder as to its abstract meaning in the term itself. For this purpose it is its own herald and teacher. As the phrase indicates, it means a representation in governmental polity of that portion of the voting population which the system of majority rule excludes therefrom. It aims to secure the representation of *all*, instead of the *major portion*. It seeks to have the opinions of the entire voting class tell upon the construction and operation of governmental machinery, instead of leaving its formation and management in the hands of a numerical majority. It wars, in short, against the *exclusiveness* of majority rule. These statements are somewhat close in their character, but a presentation of the claims of minority representation in detail will render both their import and relevancy clearly apparent.

The institution of suffrage contemplates self-government ; and the scheme, to be consistent and effectual, should establish a government of *all* by *all*. Democracies and republics have ever challenged the acquaintance of mankind as the only prominent agencies which have either sought or attained that end. They have both, indeed, striven in that direction, but both likewise have failed of reaching the desired goal. Pure democratic rule, as explained in the next preceding chapter, which provides for no compromise of individual opinion, which requires no yielding on the part of the few in favor of the many, works a confusion and disorder which is not a mere semblance of anarchy: it is anarchy itself. As a cure for democratic chaos, without working the overthrow of self-government and individual liberty, republicanism invited Christendom to its adoption. Its advertised cure consisted in the prescription of a majority rule, *both supreme and exclusive*. It is not a cure. It proceeded one step too far. Its exclusiveness robs it of completeness. It is an improvement upon the institution which it supplanted, but although

divorced from the chaotic evil of its predecessor, it is wedded to one but a single remove therefrom—disfranchisement.

There is no escape from the conclusion. This is one of the ends of our present republicanism. It virtually and practically, although not by force of law, disfranchises every voter who differs from the major portion of his fellows. Neither his voice nor his vote has an influence in the work of constructing and operating the machinery of government. It seems almost an anomaly in the history of civilization that the free countries of Great Britain and the United States should have progressed, one for a space of five hundred years, and the other for a century, without removing this defect in their constitutional politics. Minority representation has been slightly introduced in England, it is true, and the State of Illinois has within a year or two laudably initiated the experiment; but the reform would have been in perfect keeping with the civilization of at least fifty years ago. Instead of that, we find it still courting acceptance from the great majority of the people of both countries.

The primal claim of minority representation is thus seen in this prime defect of majority rule. Let this negative line of inquiry be still farther pursued, and therein look respectively for minor claims in minor defects.

For this purpose let the workings of legislation in pursuance of a strict majority rule be submitted, in one particular, to a brief examination. Let it be supposed, as is frequently the case, that a legislative body is composed of members who owe their election to *the will of a bare majority of the voting masses*. With this fact in view, let the statement receive a moment's reflection that this legislative body, which represents *the bare majority of the voting masses*, will not adopt a single enactment, will not frame a single law, by a unanimous vote. Nay more, it will very

rarely do it by a two-thirds vote. Both history and the impossibility of perfectly reconciling the differences of individual opinion furnish an abundant warrant for the assertion. The result is, that in legislative bodies composed of members elected by a bare majority of the voting masses nine-tenths of all the legislation which such a body adopts—although perfectly valid and legal by virtue of majority representation—is *in direct violation of the will of the majority of the voting masses*. Does the statement require paraphrasing to make it clear? If so, as follows: The legislative body is chosen by a bare majority of those who exercise the elective franchise. Its laws, to be the representatives of the will of the majority of the entire voting population, must become such by the assent of very nearly the entire body. Instead of this, they receive the sanction, upon an average, of only a little more than one-half of its members—*its laws are framed by a mere majority of the men whose authority to so act is derived from a bare majority of the entire voting population*—which is legislation by a minority of a suffragan people. The designation of such government by the name republicanism is an abuse of terms. It does not array itself in robes of that character. It is the raiment of despotic power.

Again, the principle of strict majority representation precludes the best intellect of a country from participating in its government—not by force of law, but by virtue of attendant circumstances which are equally compulsory. The general tendencies of republican politics under a régime of majority representation are too well known to require extended comment. It is a fact as notorious as it is lamentable that in the scramble for office, for which a strict majority rule constantly offers a premium, the lower orders of men, for the most part, alone participate. Intellect and cultured thought instinctively keep aloof from the disgusting struggle. Anticipating here the method of

minority representation hereinafter advocated, but taking it upon trust that it would secure a representation of minorities in every field of governmental action, the proposition is ventured that the representatives of these minorities would be taken from the strongest and best minds which a people might possess. Such a course, indeed, would be absolutely compulsory. As the minority would have the fewest representatives, and as, moreover, in pursuance of the plan hereinafter urged, such representatives might be chosen from candidates *irrespective of locality*, who would be, in any section, advanced for the suffrages of the people, the numerical majority, in the first instance, could only be neutralized, and the choice of *home* representatives, in the second instance, alone be secured, by putting the ablest men of the country in nomination.

A highly beneficial though indirect effect of the foregoing would be to raise the standard of the representatives of the majority. Ability can only be matched *by* ability. Numerical strength is not its peer; and the only way in which, intellectually speaking, a weak majority could withstand the encroachments and exposures of a strong minority would be to choose their representatives from a higher grade of their population. This is by no means naked and unproductive or impractical theory. It is mere loyalty to natural law, a simple response to the order of cause and effect. The bids of the political hucksters of a majority for votes would soon cease to be accepted with the brain of a cultured minority cutting its way to the seat of a government's directory.

Still further, a strict majority rule fosters class legislation. This is one of the most direct and natural tendencies of the system. It results in the formation of legislative bodies which are composed exclusively of the representatives of a faction, and by virtue of a mongrel species of political loyalty their legislation is shaped for the accomplishment of the

purposes of such exclusive class. Such legislation bears the impress of the prime evil of an aristocratic form of government—legislation by the few—without its redeeming characteristic, that the laws emanating from the will of the minority are intended for the benefit of all; for under a strict majority rule the primal and sole aim of legislation is to advance the interests of the party which placed the law-maker in power.

Viewing the matter in the abstract, the precise limits of minority representation are easily appreciable. To measure these limits by a single proposition, the statement is vouchsafed as one entirely adequate, that minority representation does not dispute the ultimate *supremacy* of majority rule, but seeks to defeat its *exclusiveness*. In other words, in all departments of governmental action the will of the majority must determine the ultimate result, but the opinion of the minority should be allowed full force in influencing and shaping the intermediate steps by which such ultimate result may be reached.

It is quite unnecessary to advance further argument in defence of the institution. Its justice is too apparent and the tenability of its claims too indisputable to require an extended assault upon its opponents. In fact, comparatively speaking, it has no opponents. The forces arrayed against it are, for the most part, entirely passive. They withhold their sanction for the simple reason that they have not acquainted themselves with its character.

Resting the defence of the system in general at this point of the discussion, the particular method in which the same shall be put in practice will now be briefly examined. In respect to this various expedients have been suggested, which may be properly classed under the generic term of cumulative voting. These schemes have assumed one or the other of the following forms—namely: that certain constituencies should be allotted a certain number of repre-

sentatives, and that each elector should be allowed to vote for a major portion of the list; the same allotment, with the provision that each elector should cast his ballot for only one candidate; and again, the same allotment, allowing each elector to cast all the votes to which the same entitled him upon any one of the candidates in nomination. These are but very imperfect plans, and do not, with any great degree of certainty or satisfaction, even approximate to the removal of the evils of a strict system of majority representation. John Stuart Mill appropriately styles them "makeshifts."

It seems to have been left to Thomas Hare, an English economist, to devise a scheme which is at the same time both simple and effectual. For a full examination of Mr. Hare's system the curious are referred to his work entitled "Treatise on the Election of Representatives." So far as the purposes of American politics are concerned, the following analysis of his scheme will prove sufficient for the general reader.

Its first feature is an apportionment of representatives upon a basis of ordinary average—namely: the number of voters who would be entitled to a representative in any legislative body would be ascertained by dividing the aggregate number of the voting population by the number of seats in such body. In respect to the manner of balloting, voters would be required to cast their votes in the locality where they resided, *but would be permitted to give them for any candidate in nomination for a seat in the legislative body, whether residing in the same place with the voter or in any portion of the country, and any candidate who should receive a sufficient number of votes, as indicated by the average above described, would be considered duly elected, without respect to the locality of the voters by whose suffrage the choice would be made.* The next provision of the scheme allows a voter to place upon his ballot the names of other candidates in

addition to the one whom he first prefers, and the order in which the names shall appear shall be considered the order of his preference. The ballot ultimately would be counted only in support of one candidate, but if the one first preferred should fail of an election, *the vote might be counted in favor of any other candidate whose name might appear upon the voting paper, whose election could be, in such manner, secured.* To obviate a difficulty which might arise at this stage of the proceeding, a failure in obtaining a full number of members for the legislative body by reason of popular candidates absorbing all the votes, Mr. Hare provides that no more ballots should be counted in favor of any one candidate than might be necessary to secure his election in pursuance of the average apportionment above described. The remainder should be counted in favor of other candidates whose names might appear upon the voting papers, whose choice could be effected by such appropriation and in the order of preference as before stated. There are many minor provisions connected with the scheme for the regulation of details, ministerial and not discretionary, which are entirely simple in their character and do not here require mention. The foregoing contains the substance of the entire plan in its most important particulars.

Words of commendation are quite unnecessary in favor of the elective innovation which Mr. Hare proposes. It relieves an elector from the unpleasant task of voting for an objectionable candidate which his locality may have placed in nomination ; prevents a consequent waste of votes from mere passivity ; gives the minority, by virtue of the privilege of concentrating its votes upon any candidate, whether local or otherwise, and in the order of preference, a fair and equal representation ; defeats local and class legislation ; makes merit the prime requisite of both majority and minority candidates, and thereby vetoes the power of moneyed and other illegal and improper agencies over the

deliberations of legislative bodies. Its effectiveness, moreover, is only equaled by its simplicity.

Its application to the republican politics of the United States is entirely feasible and free from difficulty. It would not require the slightest modification for the purposes of electing the members of our national House of Representatives, both branches of our State legislatures, and the minor organizations of city, town and village administration. The choice of our national Senators also, although effected by the action of members of our State legislatures, might be placed, for the most part, under the government of this most wholesome institution.

The adoption of minority representation, indeed, must eventually be recorded upon the annals of the American republic. Our politics will never be entirely purified, our governmental polity will never be able to show a valid claim to the title of republicanism, until this salutary system shall have become incorporated into the organic law of the nation.

CHAPTER IV.

THE CENTRALIZATION OF POWER.

State Rights vs. National Authority—The Difficulty attending the Settlement of the Possession of Power—A Task of Civilization—The Claim for Centralization based on certain Alleged Necessities—How Centralization concerns the United States—The Nature and Origin of the General Government—The Jeffersonian Theory of State Rights considered—Secession refuted—The Proper Line of Division between State and National Authority—The Constitution has Defined it by Conferring certain Joint and Exclusive Powers—These Powers Enumerated—The Canons by which they are Designated Joint and Exclusive—The Instances in which the General Government has Clashed with State Authority—The Instances in which it has in this manner Violated the Constitution—Mostly Con-

fined to the Present Administration—Instances in this connection Numerous—The Present Administration Arraigned—Its Faults Stated in Detail—Lawlessness its Prime Defect—The Chief Executive, Congress and the Departments all Involved—Centralization not Required except in respect to Suffrage—Why Required here—The Evils it would Abolish and Prevent—Ignorance the Chief Agency which essays Federal Usurpation—The same a Cumulative Fault of the Present Administration—Conclusion—Bismarck's Edict of Law—The Present Need of the American People seen in Present Abuses of Official Trust—Absolutism of some sort needed in Every Government—This in the United States is the Inviolability of its Organic and Municipal Law—The Sole Kings of the People—The Immediate Antecedents of the American People give a Reason for Present Official Lawlessness—The Necessary Rule for Official Conduct.

THIS inquiry proposes to deal with the subject of State Rights *vs.* National Authority.

There are certain questions of governmental polity which, from their peculiar nature, will never receive the seal of even temporary settlement until the highest order of civilization shall have laid its hand upon every member of the human brotherhood that shall be allowed a voice in the direction of public affairs. Of these questions there are none more prominent than the one which stands at the head of the present chapter. In attempts to solve the problem, philosophic Greece, emerging from Eastern obscurity, strode to the foreground of the world's vista, and there, with her own hand, marked out her grave; Rome, the acknowledged lawgiver of the civilized world, impaled herself upon the sceptre which her own skill had wrought; modern Gaul is constantly vacillating between life and death; Germany, the queen of cultured thought, still struggles in the morass of doubt; Britain, with all its wisdom, yet seeks the end; the rest of Europe, almost without method, is essaying to penetrate the cloud; and the American republic, with the record of eighteen hundred years shedding light upon its pathway, has but

just ceased to irrigate its fields with blood, and the question of the centralization of power constitutes one of the prime issues which still defeats a genuine union of its component States.

The reason is plainly manifest. The cause of the difficulty lies squarely upon the surface. Nations are but concretions of individuals, and the government of the former emanates from the combined will of all or a portion of the latter. Power is the most seductive agency with which a common humanity can be brought in contact. Its possession is the grand goal of mankind, and its concession is the last prerogative with which man will part. Such concession is ever the result of compromise, and the latter is effected only in pursuance of the belief that the real good of all will be thereby advanced. In this connection, moreover, the fact crowds itself to the foreground that the limit of this concession of power by means of compromise is exactly commensurate with the education, the civilization, of the people from whom it is sought. The truth of the statement is founded upon the working of natural law. The prime attribute of the brute (let it not be confounded with firmness) is stubbornness. "I will" is its logic, and "I will not" is its law. The brute is but the lower order of the savage; the latter is but the lowest type of man; and the primal condition of this "reasoning animal" is ignorance. It is impossible for man, in this condition of his being, to appreciate the fact that liberty is but a relative term—that, in the language of the duke of Argyll, it is only freedom from compulsion. He fails to see how the exchange of absolute for relative freedom, the sacrifice of brute force for digested law, the concession of brute power by means of compromise, can benefit both the masses and himself. This is a task of civilization.

Approaching nearer to the direct consideration of the main topic, the centralization of power, in view of the

abstract truths above stated, is based upon certain alleged necessities. These necessities are—the singleness and certainty of the governing power, the prevention of confusion, and the consequent advancement of the general good. These necessities, moreover, are both perfectly plausible and defensible. A detailed examination of the same will not be made in this connection. Their appropriate limits will sufficiently appear in the following comment, and the same will refer exclusively to the bearings of the main topic upon the status of the American republic.

In the United States this question of the centralization of power assumes the form of an alleged warfare of the General Government upon the dogma of State rights; and if a leaf from history was needed to corroborate the assertions of the opening paragraphs of this chapter, the virulence with which this unremitting contest has been here conducted would amply supply the blank. The concession of power! How the bare statement arouses the most dormant element of human nature! It was the chief point of contention in the Constitutional Convention; its refutation has been the slogan of a great and enduring political organization; its dispute enveloped us in the recent gigantic rebellion; and the abuse of its prerogatives in this direction by the Administration now in power has done more to alienate the North and South than all the ordinances of secession ever adopted, and constitutes the chief lever which will oust the present rulers of the nation from the places of their dishonored trust.

In a prior chapter of this treatise occasion was had to state the nature of the national Government, the origin of its creation and the source from whence it derives its power. In reference to the first, suffice it here to say that the General Government is not a compact, a league, of the States, but a distinct creation of the people in their collective capacity, as distinguished from one which emanates from

the action of the corporate States; in respect to the second, its origin dates from the evils of the old Confederation, which *was* a mere compact of the States, instead of a government of the people; and as to the third, the source of its power is identical with the agency which gave it life. The office of the present comment is to define the limits within which this power shall be held exclusive and supreme.

The old Jeffersonian theory of State rights—the essence of which, not to descend into particulars, consisted in the claim that the General Government was a league of the States, and not the work of the people, and that, consequently, the mere will, caprice or convenience of any one of the States measured alike both the extent of its loyalty to, and the period of its connection with, the general Union—this discussion unqualifiedly denies, and bases its position upon the arguments adduced in the prior chapter above referred to. The motives which induced the formation of our Federal fabric conclusively refute the claim. The fact that under the old Confederation the States were vested with the precise powers which are here denied alone gave birth to the manifold evils from which the Constitutional Convention sought release, and it severed the chains of confederate slavery by the opening words of the immortal preamble to our organic code—"We, the People." The exigencies of the time demanded it, but the necessities of the present, in this respect, far outstrip the requirements of the past. They have waxed with every year that has been added to the life of the republic. At the adoption of the Constitution thirteen States, nestling within contiguous limits upon the Atlantic seaboard, designated the length and breadth of our national domain. At the present moment the number of States is nearly trebled; the aggregate area in a far greater ratio augmented; the extent of our population stands as thirteen to one; the waters of the two

oceans wash our eastern and western frontiers, and natural law in due time will force British America and the islands of the Gulf to shelter themselves beneath the folds of our national standard. If 1789 required the banishment of the Confederation, it would be idle folly for 1872 to permit its release from exile. If the public weal at that time demanded that the will of "the People" should be the paramount law, much more is its continued supremacy now required.

The main line of division between State and national authority is inferentially disclosed by the preceding comment, and resolves itself into the following proposition, which, although it does not presume to cover every exigency which may or might arise, approximates very nearly to an inflexible rule—namely, wherever the peace, safety and prosperity of the general Union, and the preservation of a republican form of government in any one or all of the States, are at stake, the sway of the General Government should be both exclusive and supreme: in all other instances the fiat of the States should be the paramount law. This seems to be the ruling principle which governed the framers of the Constitution, and this, moreover, is the only end which can be legitimately reached by an impartial interpretation of the letter or construction of the spirit of our organic law.

Just exactly what condition of things may or might involve the peace, safety and prosperity of the general Union, and the preservation of a republican form of government in the several States, may, of course, be considered a debatable point. The Constitution, however, has presumed to place these questions within appropriate limits, and its dictum, whether purely arbitrary or founded upon reason, must be regarded altogether inviolate. In respect to the last, however, it will be remembered that in the examination of the subjects of Force Legislation and Re-

construction the question as to what constitutes a republican form of government was shown to be a political and not a judicial one, and that the tribunal which alone has jurisdiction of the matter is made up of the chief executive and the national legislature.

The prescribed limits of Federal prerogative above referred to are found in the express and implied powers which the Constitution has conferred upon the General Government. It would be both inexpedient and irrelevant, at this initiatory stage of the discussion, to engage in a separate examination of these several powers in respect to their defensibility. Their enumeration must here suffice: whether the exigencies of the time demand their curtailment or extension will be considered farther on. The inquiry which here properly presses itself upon our attention is of a different nature, as will be seen by the comment which immediately succeeds the following enumeration. In cases where these powers are exclusively vested in national authority the same will be so stated in the several definitions. In the absence of such statement it may be inferred that the power is vested in both the States and General Government, remembering also that in the exercise of these joint powers the action of the latter has precedence.

POWERS VESTED BY THE CONSTITUTION IN THE GENERAL GOVERNMENT.

1. The right to prescribe rules in respect to the time, place and manner of choosing national Representatives, and the time and manner of choosing national Senators.
2. The right to lay and collect taxes and excises; direct taxes to be laid upon a basis of the representative population—all others with uniformity.
3. The exclusive right to lay and collect duties and

imposts, except those necessary to enforce the inspection laws of the several States.

4. The exclusive right to borrow money on the credit of the United States.

5. The exclusive right to regulate commerce with foreign nations, and among the several States and with the Indian tribes.

6. The exclusive right to legislate in respect to naturalization and a uniform system of bankruptcy.

7. The exclusive right to coin money; establish regulations therefor, and to fix the standard of weights and measures.

8. The exclusive right to establish post-offices and post-roads.

9. The exclusive right to grant patents and copyrights.

10. The exclusive right to establish United States courts.

11. The exclusive right to legislate in respect to piracies and felonies on the high seas and breaches of the law of nations.

12. The exclusive right to declare and prosecute war, to raise and support armies and navies, to make rules for their regulation, and to provide for calling forth the militia to execute the laws of the Union and suppress insurrections therein.

13. The right to repel invasions, and, upon the application of their legislatures or governors, to protect the States against domestic violence.

14. The right to organize, arm and discipline the militia.

15. The exclusive right, in every respect, to exercise exclusive control over the national capital, forts, magazines, arsenals and dockyards.

16. The right to suspend the writ of habeas corpus in cases of rebellion or invasion.

17. The exclusive right to make treaties, alliances and confederations; grant letters of marque and reprisal; issue

bills of credit (that is, paper money : see definition of in chapter on Money and Currency), and to make other tokens than gold and silver a legal tender for payment of debts.

18. The right to determine the time for choosing the electors of President and Vice-President, and the exclusive right to determine the day on which the said electors shall cast their votes.

19. The exclusive right to appoint the officers, both civil and military, of the United States.

20. The exclusive right to declare the punishment for treason.

21. The right to prescribe the manner in which the acts, records and judicial proceedings of any one State shall be proved in any other State, and the effect thereof.

22. The exclusive right to dispose of and make rules respecting United States property and territory.

23. The right to preserve in every State a republican form of government.

24. The right to propose amendments to the Constitution.

25. The exclusive right to legislate for the exercise and enforcement of the aforesaid exclusive powers.

26. And the right to provide for the general welfare.

The powers conferred upon the General Government in respect to hearing and determining by its legal tribunals questions of a judicial nature have not been enumerated, for the reasons that such a statement would not be particularly pertinent to the present treatise, and that the original grants by the Constitution in this direction have been materially modified, in respect to their exclusive character, by subsequent Federal legislation, in accordance with authority granted by our organic law.

The canons by which these powers have been designated as exclusive and joint are the ones laid down by Alexander

Hamilton—namely: 1. All powers of the General Government are exclusive when the Constitution has conferred them with express words of exclusion. 2. When the Constitution has conferred powers upon the General Government, even without express words of exclusion, and forbidden the States to exercise the same, they shall be deemed exclusive in the national authority. 3. Powers conferred upon the General Government without express words of exclusion, but which are of a nature that forbids a joint exercise thereof by both the States and the national authority, shall be deemed exclusive in the hands of the latter. These last are illustrated by the matter of naturalization. The action of our courts has given to these canons of Mr. Hamilton the sanction of law.

The limits of this treatise forbid a detailed examination of the exact scope of each of these powers, but an inquiry of a general nature crowds its way to the foreground in this connection, which demands disposal. It is this: *Granting that the Constitution has conferred only such powers upon the General Government as are legitimately suggested by the fundamental principle alleged to have governed its framers, as stated in the outset, may not and does not the national authority, by virtue of its superior might, overstep the limits assigned to it by our organic law?* A reply to this interrogatory is now proposed, and will be made by reviewing the principal points which have been and are at issue, under the powers above stated, in the question of State Rights *vs.* National Authority, accompanied by a statement of what seems to be the better opinion in respect to the rightfulness of the opposing claims.

We preface the review above announced with a reiteration of our unqualified denial of the dogma of State rights which declared the national Union a compact of the several States, with the consequent right resulting to any one of them to withdraw from such compact at pleasure, to dissolve the

Union—in short, to secede. The Union, legally speaking, is indissoluble. The iron hand of war is the only agency which can tear it asunder. The parties to the general Union—the People—know no peaceful divorcement from their bridal. It is impossible. Separation means revolution. The adoption of the Constitution by the people was an irrevocable act. The organic code can be amended, *but the power of amendment does not go to the extent of stripping it of its republican robes.* We will not repeat the argument which was made at length upon this point in our chapter upon the Constitutional Amendments, but the conclusion is inevitable—the General Government can suffer disintegration or death by violence alone.

Referring now to the points at issue under the powers above named, a clash has occurred between the opposing forces, in respect to the one first noted, upon the question of elections. We hazard the statement that the extreme limit of national prerogative in this direction consists in the right of regulating the time, place and manner of choosing members of the House of Representatives, and the time and manner of choosing national Senators. The proposition requires no elucidation. Over both points the General Government has exclusive control, except that it is powerless to change the place for choosing members of the national Senate. The present Administration and its legislators, however, have clearly violated these plain provisions. The act of February 28, 1871, still in force, authorizes officials of the General Government, appointed for the purpose, in cities numbering twenty thousand people and over, to “personally scrutinize, count and canvass *each and every ballot,*” whether for local or national offices; authorizes United States marshals to appoint deputies without number to assist in this work; authorizes these marshals to arrest any voter at the polls without process or warrant; attaches a penalty to the refusal of every citizen to assist such

marshals, when called on, of imprisonment for two years and a fine of three thousand dollars ; and places, in short, all local elections in cities numbering twenty thousand people and over, whenever officials of the General Government are to be chosen, entirely under national authority and supervision.

The direct end of this statute is to enable a ruling administration to re-elect itself, and the supporters of the one now in power, with the advice and sanction of the chief executive, not only stoutly resisted its repeal, but attempted to extend its operation over the entire country for the express purpose above stated, and that by a proceeding, to say the least, extremely irregular, if not fraudulent. A rule of the Senate forbids the tacking of an amendment to any measure unless strictly germane to the subject of the main bill. The executive party lacked the effrontery to offer the measure above noted as a distinct bill, and proposed it as an amendment to a general appropriation bill, *thinking that, rather than leave the Administration without means for carrying on the government*, the amendment would be adopted and the bill passed. The merest tyro in legislation sees at once that the proposed amendment was not germane to the main bill. Mr. Colfax could not be trusted to rule it germane, but Senator Anthony took the chair, and, with an appreciation truly wonderful and nicely subtle, ruled that a provision placing the local elections of the entire country under national supervision and control was germane to a bill appropriating means for keeping in motion the wheels of government. Despite the manly protests of such men as Lyman Trumbull, Carl Schurz and Charles Sumner, the amendment was adopted by the Senate, but when it reached the House it met with the ignoble defeat which its questionable character richly deserved.

A collision has also occurred between the opposing forces under the second power noted in the list, in respect

to the right of the General Government to lay and collect an excise-tax. The contest assumed the shape of open insurrection in Pennsylvania in 1794, against the whisky-tax of that year, and was promptly and legally suppressed. The national authority in the premises is clearly undoubted, and extended comment is unnecessary.

Under the third power above stated trouble has also arisen between the respective forces—namely, the rebellion of South Carolina, during Andrew Jackson's administration, against the tariff of that period. The authority of the General Government to impose imposts is not only unimpeachable, but also exclusive, except in the trifling exception mentioned in the statement of the power.

By an unwarranted and illegal construction of the Fourteenth amendment the present Administration and its law-makers have unhesitatingly violated the thirteenth and twenty-third powers in the above enumeration by the passage and execution of the measure commonly known as the "Ku-klux act." We will not repeat our examination of this abortive scheme of legislation. It is discussed at length in our chapter upon Force Legislation, to which reference may be had if desired. Suffice it here to say that it is wholly illegal and indefensible.

The present Administration and its lawmakers, again, have openly transgressed the sixteenth power above enumerated by the *habeas corpus* provision of the so-called Ku-klux act. We refer again to our chapter on Force Legislation for corroboration of the assertion.

The foregoing statement of facts defines the principal limits of both the past and the present battle-ground upon which the conflict of State Rights *vs.* National Authority has been and is still conducted. The interrogatory put at the close of the above enumeration of powers, however, is not yet fully answered. It calls for a statement not only of the cases in which the General Government has clashed with

the States in reference to the exercise of constitutional warrant, but also the instances, if any, in which the national authority has stepped entirely outside of the Constitution—instances in which it cannot even allegedly summon the powers conferred by that instrument to sanction its conduct and clothe it with legal warrant. This portion of the reply will now be offered, and will refer, with a single exception, to the action of the present Administration alone, for the facts of history confine it within these narrow boundaries.

The exception above noted relates to the purchase of Louisiana by the administration of Thomas Jefferson. It was an undoubted violation of the Constitution, and the movers of the scheme, even, never presumed to place it within the limit of constitutional sanction. Mr. Jefferson declared it to be an act entirely beyond the reach of constitutional authority, and advised an amendment to our organic law which should be retrospective in its effect and antedate in its operation the time of purchase. The end obtained, however, was one of such great importance to the American people—the prevention of territorial acquisition by Napoleon in the South-west, and the opening of an unrestricted water-passage from the Lakes to the Gulf by means of the control of the Mississippi—that the act was never questioned by the public.

The instances in which the present Administration is powerless to draw the mantle of the Constitution around its policy and line of action are many and exceedingly grave. Congress, by the Constitution, can alone declare war. The President has not only subverted the war-powers of Government, but disregarded the plainest principles of international law, by sending one squadron of men-of-war to the coast of Santo Domingo with instructions to the commanding officer to sustain Baez, an admitted usurper, in power upon this portion of the island, while he (the President) should treat with him (Baez) for its purchase, and

another squadron, at the same time, to the harbor of Port-au-Prince, with a message to the chief executive of Hayti that if he interfered with the pending negotiations above mentioned, the guns of the American fleet would open upon the Haytian ships.

The War Office of the present Administration has followed the example of its chief—offered indignity to the German Government, laughed at the *Code Internationale*, and violated a plain statute of the United States, which authorized the disposal of arms unfit for service, by the sale of effective weapons and ammunition manufactured for the occasion to the now defeated party in the late Franco-Prussian conflict.

The Navy Department has also acted its rôle in this abuse of the administration of government by the illegal payment of nearly one hundred thousand dollars to what are known as the Secor claimants, in the teeth of a prior record of Congress which had directed that no further action be taken in the premises.

The office of Finance, moreover, has played its part in the drama of official law-breaking by an open violation of a United States statute, as seen in its "Syndicate" operations, the illegality of which is fully disclosed in the chapter upon the Public Debt of the United States.

The Post-Office Department has also ranged itself in line with its compeers by allowing a stale (Chorpenning) claim of \$440,000, after the same had met with repeated rejection for a period of fourteen years on account of its undoubted illegality; and this in direct violation of the will of Congress.

The President, again, in addition to his tampering with the war-powers of Government, has sported with its judicial prerogatives by sending a United States judge to Utah for the purpose of ousting the jurisdiction of the Territorial courts over the Mormon residents; and the judicial action of his messenger has been pronounced unconstitutional by both his Attorney-General and the Supreme Court.

But the end is not yet. The chief executive has been charged—and the charge is fully proved—with making loyalty to his personal advancement the price of admission to the civil service of the nation; with prostituting the business of a custom-house which collects more than one-half of the duties of the entire country to the purpose of controlling the political action of the State of New York in his favor; and with mulcting the merchants of the metropolis of the nation out of from fifty thousand to one hundred thousand dollars per annum, by changing the custody of imported goods from the stores of the various steamship lines to those of pet *protégés* of his own, who have made illegal and excessive charges for their services in the sum above named.

Official supporters of the President, moreover, have laid their hands upon one of the chief bulwarks of the people's liberties in their subversion of the freedom of the press. The St. Louis *Democrat* furnishes an illustration of the manner in which a journal once hostile to a certain feature of the policy of the Administration has been numbered among its warmest adherents by the exercise of a supposed stock-jobbing operation conducted by presidential parasites.

Add to all this the instances of interference with State prerogatives already cited—namely, an election law unconstitutional, an unwarranted suspension of the privilege of the writ of *habeas corpus*, coupled with a scheme of force legislation derogatory of our organic code—and we have a record of abuse of official trust which the emperor of Germany, or even the king of Spain, would not dare to imitate, except with the expectation of seeing his throne crumble to atoms and his crown in the possession of an infuriated populace.

The question which now presents itself is the defensibility of the powers conferred by the Constitution upon the General Government. Do they require either curtailment or

extension? or are they already adequate for the mutual advancement of both the States and the republic? The latter, it must be confessed, with one exception, is seemingly the better opinion. Our present enormous territorial area, coupled with its prospective enlargement, furnishes the chief argument of the theorists who advocate the necessity of "a strong government," and the consequent centralization of power in the hands of national authority. But the alleged necessities advanced by the argument, save in one instance, are already provided for. With the old dogma of State rights denied by the arbitrament of the sword, as well as by judicial authority, which signified, in plain parlance, secession—with this theory buried in a grave from which there shall be no resurrection—supplemented by the exclusive powers in the possession of the General Government of declaring and waging war, of laying and collecting imposts, of regulating commerce, of directing the character of our circulating medium, and of prescribing rules for the regulation of United States territory, and the joint power of preserving a republican form of government in the several States, centralization is not demanded by the exigencies of the period, except, as already stated, in one single particular—suffrage.

In this respect this discussion most emphatically urges a policy of centralization. It urges it because it is needed to perpetuate the fundamental principle which governed the framers of the Constitution—that the General Government should be possessed of sufficient power to guard the peace, safety and prosperity of the general Union; because it is needed to prevent just such subversion of law as the present Administration has put upon record.

The exact point urged is this—that suffrage should be a national institution, that the qualifications for voters should be uniform in every instance, and that the same should be prescribed by national authority. The critical mind will

doubtless in this connection interpose the objection that the argument, coupled with the alleged end it is designed to secure as above stated, is suicidal—that the control of suffrage by the General Government would tend to augment instead of restrict the usurpation of national authority. The position is only seemingly sound. The question is one of a very different nature from those which have thus far given rise to a conflict between State and national authority. The control of suffrage by the General Government means its supervision by the combined agencies of the national legislature and chief executive. A moment's reflection will suffice to convince the most skeptical that the only motor-power which would govern the action of these respective agencies would be a desire to place the institution upon the most sure, equitable and efficient foundation. Our history shows conclusively that the chief, if not the only, instances in which a political party has been able to marshal the forces of the legislative and executive branches of the General Government in support of purely party aims have been those in which State prerogatives of a *permanent nature* have failed to be involved.

Upon the hypothesis that suffrage is a national institution, it is clearly apparent that the only conceivable manner in which a party in power could make use of it as a lever for the attainment of its own peculiar ends would be by a provision which, *either directly or indirectly*, would operate to restrict the privilege of voting among the members of opposing organizations—to disfranchise its opponents. That any political organization would have the effrontery to hazard the promulgation of such a policy is hardly a supposable case. Loyalty to party policy would alone forbid it, for the iniquity of the scheme would not only insure it an ultimate burial, but hasten the official dethronement of its originators.

There are other and more potent agencies, however,

which would preclude the prosecution of such unwarrantable means. The exercise of the elective franchise constitutes not only the most important but the most lasting of any of the prerogatives which attach to State authority. It is, so to speak, the first, last and only means by which a State can make its influence felt in shaping the policy and destiny of the republic. The several ways in which the party in power could be supposed to mould the institution of suffrage for the advancement of its own peculiar purposes are only four in number—namely, the direct disfranchisement of its opponents, a qualification in respect to property, a qualification in respect to acquiring citizenship, and a qualification in respect to intelligence. The first no party would ever dare attempt; the last three immediately summon into offensive action the dearest interests of the several States, and their respective members in the national legislature, in consideration of such issues, would not hesitate for a moment between the alternative of choosing the advancement of a national party and the defence and promotion of their local interests. Self-aggrandizement, loyalty to constituents and a train of collateral forces would militate against their ranging themselves with the centralizing and usurping element. The party shibboleth would here be robbed of both its charm and power.

There is, moreover, another aspect to the question. The prior comment has proceeded upon the idea that with suffrage once made a national institution, its future regulation would be in pursuance of national legislation. The seeming objections above enumerated, however (and this discussion claims they are only such), might be effectually disposed of by a prescription in our organic code that the institution, although national, should never suffer change except by an amendment to our Federal charter.

In the outset of this immediate discussion the prevention of Federal usurpation was urged as one of the reasons for

the institution of this feature of centralization. The scope of the argument is simply this. It is probably useless to hope—perhaps the wish would savor of injustice, but we doubt it—that a qualification of intelligence will ever be attached to the exercise of the elective franchise so far as those now endowed with the privilege are concerned. If a critical reader asks that this treatise commit itself more fully upon this single point, let him console himself with the answer that it candidly and emphatically argues that the wisest act which the American people could to-day put upon record would be to consign two-fifths of its enfranchised citizens to a probation based upon intelligence, and never allow them to cast another ballot till the period of probation should have been concluded. Such a proscription would reach white, black, native and alien equally and impartially.

Admitting the probable impossibility of such a scheme, however—if such a seeming paradoxical expression may be tolerated—this discussion augurs, as already intimated, that the experience of the past and the present would induce the future to place the institution of suffrage, if made a national one, upon a prospective basis of intelligence, and so curb the tendencies of centralization by the General Government.

The pages of history are burdened with proofs that ignorance, and not intelligence, delights in the exercise of unwarranted and unauthorized power. The ignorance (and the term is here used in a relative sense as connected with the requisites of a chief magistrate) that now sits enthroned at the head of the executive department of the Government of the United States was put in possession of its official coronet by the ballots of ignorant and unqualified voters, and if continued in the place of its dishonored trust, it will be by the voice and choice of the same identical agency.

Ignorance, in short, in the exalted position of a member

of the General Government will alone indulge in unbridled and illegal action, and the latter can be prevented only by excluding this element from the forces which direct the organism of the governmental directories. It cannot be otherwise. The stream cannot rise above the fountain. Ignorance begets its like, and intelligence stamps its features upon every object of its creation.

CONCLUSION.

The deduction to be made from the preceding comment upon the centralization of power cannot have failed to suggest itself to every American mind and every lover of republican institutions.

When the recent contest in respect to excluding the Church from the supervision of the school-system of Germany was concluded by an adoption of a measure to that effect by the Reichstag, Chancellor Bismarck added to the many trite and comprehensive declarations he has so frequently put upon record, his notable, exultant and almost defiant yet praiseworthy edict, "that the only sovereignty that will be hereafter tolerated in Germany is the sovereignty of law."

The principle embodied in this decree of the able statesman and indomitable Teuton should be adopted as the first article of the new political creed of the American people, with the express provision that it shall never suffer abrogation or amendment. It is a tenet which has been placed at the end of the code of the present Administration, or rather it has never been accorded a place therein of any sort whatever. The chief weakness, the prime defect, the cardinal fault of the régime that assumed the direction of the General Government in the spring of 1869 is its absolute and unqualified lawlessness. That it has been based in many instances, as its defenders allege, upon ignorance, is

undoubtedly true, but this augments instead of palliates the faulty character of its policy and line of action. Its shortcomings in this direction are not merely trivial—they are of the gravest possible character. These defects of our present Government are not here referred to in the way of either criticism or crimination. The former has already been given in a prior connection, and aimed to be candid, impartial, impersonal, truthful and free from malice. The point is here allowed a repeated mention solely for the purpose of pointing to the conclusion which naturally flows from the discussion of the topic of centralization.

The bulwark of republican institutions, the shield which can alone effectually resist the onslaughts of discontent, and assure their maintenance even, not to say supremacy, is the inviolability of their organic and municipal law.

Absolutism, so to speak, must attach in some way to every form of government whatsoever. In monarchical countries the ruling monarch possesses this really royal attribute. In the American republic, however, its constitutional and statute laws are the only kings of the people. They must stand immutable in respect to their supremacy over all other agencies, for all attempts to make them secondary, as in the case of the present Administration, are simple efforts, however well intended, to change the republic to an empire—to take a step backward from the confines of civilization.

The triviality of offences in this direction affords no excuse for their commission. As Carl Schurz has truly said, "The rights of the people are never taken away with sound of trumpet, but in a quiet, unobtrusive way, under some far-fetched text."

The immediate antecedents of the American people give some reason for the present era of centralizing tendencies and the violation of law on the part of the General Government. They have just emerged from a stupendous con-

flict, wherein the heat and exigencies of the struggle frequently led to expedients which could hardly claim the element of legality. The masses, in short, have become accustomed to the spectacle of a disregard of legal restraints by public authority, and the chief executive, schooled to undoubted perfection in the arts of war, but almost wholly untutored in the requirements of peace, has very naturally tended to shape his action by the code of personalism which alone attaches to military life and the administration of despotic government.

The sunlight of peace, however, again smiles upon the entire length and breadth of our national domain; and while "Our Country and its Institutions" should be the burden of every morning orison and evening supplication to the King of kings, "the only sovereignty that will be hereafter tolerated in the American republic is the sovereignty of law" should be written in deathless letters above the portals of every abode of official power that stands within the territorial limits of the United States.

•



INDEX.

- ABSOLUTISM** must exist in all governments, 572.
- Adams, John Quincy, as a statesman, 517.
- Agriculture, pursuit of, 428, 429, 435, 436, 443, 444; needs no protection in the United States, 464-466.
- Alabama, how reconstructed, 202, 205, 294; abuse of custom-houses of, 371.
- Alcavala, Spanish, 500.
- Amnesty, general remarks on, 296; the several measures of proscription, 297, 300, 303; the abstract causes which invoke amnesty, 301, 302; the ends sought, and means for their accomplishment, 302, 303; the moral argument, 303, 304; the question in the United States, 304; the last measures of proscription condemned, 304-308; universal amnesty demanded, 309, 310; legality of President Johnson's pardons, 310-312; amnesty in Missouri, 315.
- Aristotle on man, 422; on life, 515.
- Arkansas, how reconstructed, 200, 201, 205, 218, 270, 293.
- As, Roman, 150.
- Assessments, political, 354, 373, 374.
- Ayr, Bank of, 64.
- BALANCE** of trade, 40-45.
- Banks, Ayr Bank, 64; United States Bank, 65; Gold banks, 74, 75; the cause, origin and growth of banking business, 95-98; private banking in England and the United States, 112-115; Bank of England, nature of, 112; how chartered, 164; Banks of Amsterdam, Genoa and Venice, detailed and interesting description of, 115-119; Bank of England pays a tax on its circulation, 133.
- Banks, N. P., in Louisiana, 200.
- Barter, 32.
- Bismarck on the sovereignty of law, 571.
- Blackstone, William, on evils of funding, 163.
- Bowen, Francis, upon decline in value of money, 49; on evils of funding schemes, 163; as a writer upon public economics, 163; on taxing bachelors, 486, 487.
- Bradley, Justice, on effect of Fourteenth amendment, 244.
- Breckenridge, John C., as Vice-President, 197.
- Brokers, Wall street, 51, 52.
- Bronson, Justice, on the Constitution, 211.
- Brougham, Lord, on salaries, 374.
- Brown, B. Gratz, on amnesty in Missouri, 315.
- Buffon on genius, 366.
- Burke, Edmund, on government, 263.
- Butler, B. F., on legal-tender notes, 182.
- CALHOUN, JOHN C.**, on tariffs, 452.
- California, gold-mines of, 65.
- Capital, laws of, 413-416.
- Centralization, 333-336; as seen in ancient states, 552; the difficulty of the question, 553, 554; State Rights *vs.* National Authority, 554, 555; the Jeffersonian theory, 555; line of division between State and National authority, 556; how defined by the Constitution, 556, 557; powers conferred upon the General Government, 557-559; how construed, 560; secession denied, 561, the battle-ground of State Rights *vs.* National Authority, and the instances in which the present Administration has acted illegally, 561-566; suffrage should be made a national institution, 566-571; the prime defect of the present Administration, 571, 572; the reason of present centralizing tendencies, 572, 573.
- Certificates of deposit, issues of, 73.

- Cheapness, law of, 404-406.
 Chicago, fire at, 258.
 Chicago, platform of, 258.
 Chorpennig, claim of, in Post-office Department, 565.
 Circulating medium, amount now needed in the United States, 82-84; its issue belongs to the people, 107, 108; circulating medium of London, 109; convertibility of, fully considered, 110-112.
 Circulation, its issue belongs to the people, 107, 108; amount of bank circulation in the United States, 112; of no benefit to city banks, 115; country banks abuse it, 115.
 Cities, question of, 431-436.
 Civilization, stages of, 511, 512; as connected with government, 511-517.
 Civil Rights (see RECONSTRUCTION).
 Clanship, difficulties of, 524, 525.
 Clay, Henry, financial measure of, 65; on tariffs, 452-455; an aspirant for the presidency, 455; as a statesman, 517.
 Coal, protective tariff not needed on, 464-466.
 Colbert, the originator of the idea of making a public debt perpetual, 160.
 Colfax, Schuyler, on the election law, 562.
 Competition, 409-418.
 Compound-interest notes, 71, 72.
 Confederation, a State league, 202-204; suffrage under, 257, 258.
 Confiscation, acts of, 193, 194, 215, 216.
 Congress, what constitutes two-thirds of both Houses of, 197, 198; on reconstruction, 72, 81, 82, 85-88, 200, 201, 205, 206; error of, in reconstruction, 222. •
 Constitution, not a State league, 202-204; amendments to—the scope of the subject, 190, 191; the Thirteenth amendment, sentiment of the public in respect to, 192, 193; legality of vote proposing the Thirteenth amendment, 196-198; legality of its ratification by the States, 198-206; constitutionality of, 206-216; promulgation of, 226; power to amend the Constitution, 207-210; special, general and implied powers of, 207-210; the Supreme Court on said powers, 208; Fourteenth amendment of—its cause, origin and import, 223-226; proposal, ratification and promulgation of, 227; legality of vote on, in Congress, 227; legality of ratification of, 228, 231-236; status of late insurrectionary States in connection with, 228, 229, 231-236; measure taken by Congress to secure its adoption, 229, 230; constitutionality of, 237; woman suffrage under, 237-240; effect of, on monopolies, 243-247; general effect of, fully stated, 247; Fifteenth amendment—its cause, origin and ratification, 248, 249; right of a State to withdraw its ratification of an amendment, 251-253; constitutionality of Fourteenth and Fifteenth amendments, 254-260; extent of power of amendment, 258, 259; results of the Fourteenth and Fifteenth amendments, 261, 262; criticism of the same, 262-268.
 Culture, the plea for, 430, 431.
 Currency, convertible, its basis, 50-52; the theory and utility of, 52, 53; the characteristics of, 53; the proper amount of a convertible issue, 53; inconvertible, or paper money, its cause, 54; its theory, 55, 56; fractional, 70; "equalization" of, 73, 74; mutilated, evils of, 86; currency, equalization of, in United States, why not accepted, 131.
 DAVIS, HENRY WINTER, fiasco of, on Mr. Lincoln's reconstruction policy, 221.
 Davis, Jefferson, as connected with amnesty, 310.
 Debt, public, origin of, and viewed historically, 143, 144; why governments can easily negotiate loans, 144, 145; when first originated, 147; France, England and Holland cited, 147; the manner of contracting, 147, 148; the means of payment of, as seen by history, 149-151; the theory that it is a national blessing examined, 151-155; why governments do not "pay as they go," 156; funding of (see FUNDING SCHEMES); public debt of the United States—amount of, before the war, 164, 165; inappreciation of the extent of the late rebellion by Government in contracting, 165, 166; history of the acts of legislation authorizing its contraction, and the issue of evidences of indebtedness thereunder, 166-170; the financial errors of the war-policy of Government, 169-173; the proper course to have been pursued, 171-173; statement of public debt, 184; decrease of, 184; how it should be paid, 503-507.

Decrees, Berlin, Milan and Rambouillet, 451.

Democrat, St. Louis, manipulation of, 566.

Deposit, 98-106; amount of, in New York City banks, 106; amount of, in entire country, 106.

Discount, 104, 105.

ELDER, WILLIAM, as a writer on public economics, 163.

Emancipation, proclamations of, 193, 194, 215, 216.

England, status of, in respect to free trade, and why she advocates it, 437-443.

Examinations as a test of fitness, 391-393.

Exports, 43, 83; protection does not prevent, 420-423; connected with tariffs of the United States, 459-462.

FAMILY, its purposes, 540.

Fashion, code of, 493-495.

Ferguson, Adam, on animal life, 532.

Fessenden, William Pitt, on impeachment of Andrew Johnson, 313, 314.

Fifteenth amendment. (See CONSTITUTION.)

Florida, how reconstructed, 293.

Force legislation, the Ku-klux law stated, 316, 317; constitutionality of, 317-331; the plea of necessity, 331-333; as connected with the centralization of power, 333-336; action taken under the law, 336; the policy of the scheme, 336-342.

Fourteenth amendment. (See CONSTITUTION.)

France, farmers-general of, 148.

Freedmen, Bureau for Relief of, 273; scheme vetoed by President Johnson, 273, 274; comment on, 282, 283; adopted over President's veto, and commented on, 284, 285.

Free trade. (See PROTECTION AND FREE TRADE.)

French armies, 565.

Funding schemes, viewed historically and philosophically, 156-158; sinking funds, 159; process and progress of, in Europe, 160, 161; evils of funding, 161-163; opinions of eminent writers upon the same, 163; the recent funding schemes of the United States, 174, 175; the Syndicate operation of the Department of Finance examined, criticised, proved illegal, and collateral comment, 176-179;

the practical results of the funding schemes of the United States, 181-183.

GEORGIA, how reconstructed, 202-205, 249, 293-295.

Ghent, treaty of, 451.

Gold the standard measure of value in the United States, 31; reason for hoarding it by the United States Treasury, 80.

Grant, U. S., nomination and election of, to the presidency, 258, 294; action of, in reference to the Chicago fire, 336; reduction of public debt during Administration of, 184.

Grimes, James N., on impeachment of Andrew Johnson, 313, 314.

HABEAS CORPUS, suspension of, 326-328, 563.

Hamilton, Alexander, on protection, 450; as a statesman, 450, 517; on the Constitution, 559, 560.

Hare, Thomas, on minority representation, 549, 550.

Hume, on evils of funding, 163.

ILLINOIS, railroad policy of, 376.

Imports, 43, 459-462.

Indiana on ratification of Fifteenth amendment, 250, 251.

Interest, 45; effect of moneyed needs of Government upon rate of, 46; effect of the age of a nation's commerce or the state of its productive industries upon same, 46, 47.

Ireland, cause of famines in, 443.

Iron, protective tariff needed on, 464-466.

JACKSON, ANDREW, illustrates the lawlessness of military Presidents, 343.

Jameson, Judge, on woman suffrage, 243.

Jefferson, Thomas, as a statesman, 517.

Johnson, Andrew, in Tennessee, 200; is President, 201; course on reconstruction reviewed, 218-222, 291; vetoes of (see RECONSTRUCTION); legality of pardons of, 311-312; impeachment of, 312-314.

Joint-stock companies, evils of, 114.

KU-KLUX, 308, 309, 335-339.

LABOR, the ultimate measure of value, 28; how laboring classes are affected by our present money circulation, 85-89; rude

- and skilled, 427, 428, 443, 444; English and American labor contrasted, 436, 437; status of English labor, 439-442; how unjustly taxed in the United States, 498, 499.
- Laing, Samuel, on political economy, 400.
- Law-business and lawyers of the United States, 391, 392.
- Ledyard on woman, 534.
- Lee, General, as connected with amnesty, 310.
- Legal-tender notes, first issue of, 69; second and third issues of, 70; criticised, 76, 77; action of the United States Supreme Court in reference to, 77, 78; authority of the Secretary of the Treasury to make further issues of, 78, 79; what they cost the Government, 80; should be retired, 91-94; contest between, and the National banks, 138-142.
- Lincoln, A., offer of pardon by, to the Southern masses, 199, 200; refuses to indorse Congressional measure of reconstruction, 201; death of, 201; course on reconstruction reviewed, 218-222, 291.
- Literature, nature of, 533.
- Lobbyists, female, of Washington, 542.
- Longstreet, General, as connected with amnesty, 310.
- Louisiana, how reconstructed, 200, 201, 205, 218, 270, 293; purchase of, 564.
- Lucca, silk manufacturers of, 444.
- Lumber, protective tariff not needed on, 464-466.
- MALTHUS, theory of, as to population, 440, 441.
- Marcy, William L., on civil service, 342; author of, "To the victor belong the spoils of the enemy," 342.
- Marshall, Chief-Justice, on the Constitution, 208, 256.
- McCulloch on evils of funding, 163.
- McPherson, Edward, "Political Manuals" of, 295.
- Medium of exchange, necessity of, begins with division of labor, 32.
- Mill, John Stuart, on evils of funding, 163; on protection, 425, 426; on house-taxes, 486; on governments, 513; on suffrage, 529-531.
- Minorities, representation of, 543-551.
- Mississippi, how reconstructed, 249, 295.
- Money, its invention, 20; its origin with the ancients, 20-24; the subject classified, 24; its requisites, both material and potential, 25; the precious metals appropriated for, 26; money defined, 26; the offices of money, 27; a measure of value, 27; a mere nominal measure, 27; the nearest absolute measure of any material token, 29; the cost of production its basis, 29, 30; a medium of exchange, 31, 32; a producer of value, 32-34; relations of, to commerce, 34; amount needed for commercial purposes, 34-39; the character of money needed, 39, 40; prospective decline in the value of, 48, 49; the kinds and substitutes of, 49; two in number, convertible currency and inconvertible currency, or paper money, 50. PAPER MONEY, its cause, 54; paper money in the American Colonies, 54; in France, 54; in Great Britain, 55; its theory, 55, 56; its characteristics, 56-58; the proper amount of an issue of, 58; the effect of excessive issues of, 58-65; kind of money now in use in the United States, 67; history of the same, 68-75; the amount of money in circulation before the war, 68; the amount and kind of money in circulation in the United States at the close of the year 1871, 76; the amount needed in the United States at the present time, 82-84; evils of the money now in circulation, 84-89; how laboring, salaried and agricultural classes are affected by, 85-89; evil resulting from mutilated currency, 86.
- Monopolies, protection does not create, 417-419; as effected by the Fourteenth amendment, 243-246.
- Morton, Oliver P., on legal-tender notes, 182.
- NAPOLEON, what it cost to banish him to St. Helena, 147, 450, 451.
- National banking system, its cause and origin, 120; the main features of, 120-122; its material basis, government bonds, a great advantage, 123, 124; arguments against this feature refuted, 124-126; capital stock of, 125; circulation of, 125; bonds of, on deposit at Washington, 125; the uniformity of

- the system an advantage, 127; arguments against this feature examined and refuted, 127, 128; its circulation cannot be in excess, 128; the system a monopoly, 129, 130; circulation of, should redound to the benefit of the people and not to the banks, 131-133; the system taxes the people in the sum of nearly \$20,000,000 annually, 133; the reserve feature of the country banks wrong, 134; the sum-total of the reserve of the National banks, 135; the inadequacy and non-necessity of its scheme of convertibility, 135, 136; depositors of, no claim upon the Government, 136, 137; the contest between the National banks and the legal-tender theorists fully examined, and the latter shown to be in the wrong, 138-142.
- Nation*, New York, on Fourteenth amendment, 245, 246; on status of the South, 339-341.
- New Jersey, withdrawal of ratification of Fourteenth amendment, 231-251.
- New Orleans, case of Crescent City Live-Stock Landing and Slaughtering Company of, 244-246; abuse of custom-house of, 371.
- Newspapers, attachés of, should be excluded from civil service, 384, 385; influence of editorials of, 384, 385.
- New York on ratification of Fifteenth amendment, 249-251; how jeopardized by universal suffrage, 265; corrupt manipulation of legislature of, by a collector of customs and a national legislator, 353, 354.
- New York City, report of clearing-house of, 83; abuse of custom-house of, 371.
- Non-intercourse measures, 451.
- North Carolina, how reconstructed, 202, 205, 293.
- Nullification by South Carolina, 455.
- OATHS, test, constitutionality of, 315.
- Ohio, withdrawal of ratification of Fourteenth amendment, 231-251.
- Orders in Council, British, 451.
- Otway, Thomas, on woman, 534.
- PALMER, GOVERNOR JOHN M., as connected with the Chicago fire, 336.
- Panics, commercial, of 1837 and 1857, 65, 461, 462.
- Pendleton, George H., on legal-tender notes, 182.
- Politics, nature and associations of, 535, 536.
- Price, law of, 407-410.
- Production, extent of, in the United States, 37-42, 82; laws of, 404-409; the basis of national prosperity, 422-425, 431, 432.
- Proscription, general measures of, 297-300, 304-306; as a means of punishment, 307, 308.
- Protection and free trade viewed scientifically, 399, 400; line of argument of the opposing forces, 400; protection and free trade defined, 401-403; the conditions upon which the opposing doctrines rest, 403-406; limits of the two systems, 407-426; protection does not permanently enhance price, 409-412; does not divert capital and industry to their prejudice, 413-416; does not create monopolies, 417-419; does not foster ignorance, 419, 420; is not taxation, 420; does not bar exportation, 420-423; production the basis of national prosperity, 422-425; protection increases production by placing producer and consumer together, 422-425; collateral tendencies of the two systems, 426-433; cities and villages in this connection, 430, 431; culture, 430, 431; the question of civilization, 432, 433; the proper policy for the United States, their peculiar status considered, 433-435; free trade indefeasible as to raw materials, 436, 437; labor, English and American, 436, 437; England and America compared in this connection, 437-439; reason why England advocates free trade, 439-443; English labor, abuse of, 439-443; the Malthusian theory of population, 440, 441; England has natural protection, 442, 443; our condition wholly dissimilar, 443; protection defensible for the United States, 444, 445.
- QUESNAI on land taxation, 480.
- RANDOLPH, JOHN, on tariff of 1816, 452.
- Real estate, exchanges and sales of, 82.
- Reconstruction, power of General Government thereon, 204, 205; act of March

- 2, 1867, 229, 230; initiatory measures of, 270; chronological record of, to 1866, 271, 272; position of Congress on, 272, 273, 281, 282; Freedmen's Bureau bill vetoed by President Johnson, 273, 274, 282, 283; adopted finally, 284, 285; civil rights measure adopted over President's veto, 275, 276; constitutionality of, 276-278; constitutionality of, considered, 276-281; progress of, in 1866, 282, 283, 285; act of March 2, 1867, 285, 286; commented on, 286-288; vetoed by President Johnson, 288-290; the policy of the scheme, 290, 291; the legality of the Presidential schemes for, 291; completion of, 292-294.
- Register, Niles's*, on tariffs, 453.
- Representative government, elements of, 511-517.
- Revenue reform, 507.
- Revenue, United States, sources and extent of, 498, 499, 505; amount now required, 504.
- Ricardo on evils of funding, 163.
- Ryswick, peace of, 147.
- SALARIES** of government officials, 374-377.
- Santo Domingo, Grant on, 564, 565.
- Schurz, Carl, on amnesty in Missouri, 315; on the election law, 562; on the liberties of the people, 572.
- Scotland, commercial convulsion in, 64.
- Secor, claim of, in the Navy Department, 565.
- Seigniorage, 31.
- Service, civil, past history of, 342, 343; definition of the phrase, 344; outlines of the present system, 344-346; defects of the present system, and their bearings upon the President, members of Congress and members of the service, 346-350; bearings of the same upon State elections, 350-352, 353; bearings of the same upon national and State conventions and local primaries, 350-352; bearings of same upon State legislature, 353, 354; assessments, political, 354; *esprit de corps* in party organization, 354-356; bearings of the system upon individual character, 354-356; statement of the number, grade and salaries of members of the service, 356-359; how appointed, 359-361; a scheme of reform, consisting of twelve changes in our organic and municipal law, proposed and separately discussed at length, 361-385; constitutionality of the scheme, 385, 386; legislation necessary to put it in operation, 386-388; advantages of, 387, 388; report of Civil Service Commission examined, and the plan there proposed shown to be a failure, 389-396; abuse of, 566.
- Seward, William H., promulgates Fourteenth amendment, 230, 231; as diplomat and Secretary of State, 274; as a statesman, 517.
- Shakespeare on woman, 534.
- Sharswood, George, on woman suffrage, 243.
- Sheep, flocks and slaughter of, in various years, 466.
- Sherman, John, on legal-tender notes, 182.
- Slavery, repeal of its legalization in New Mexico, 193; abolition of, in the District of Columbia, 193; abolition of, in the Territories, 193. (See CONSTITUTIONAL AMENDMENTS for other matter in reference to.)
- Smith, Adam, on evils of funding, 163.
- South Carolina, how reconstructed, 202-205, 293.
- South, present status of, 308, 339-342, 429, 430.
- Specie payments, suspension of, in the United States, 69; in England, 90; how resumption of, is effected, 89-91; how it should be in the United States, 91-94; Senator Sumner's plan for, criticised, 92-94.
- State Rights. (See CENTRALIZATION.)
- Steele, General, on reconstruction, 200.
- Stevens, Thaddeus, author of resolution proposing the Fourteenth amendment, 227; on the right of the negro to vote, 224.
- Strong on the Constitution, 213.
- Suffrage, woman, under the Fourteenth and Fifteenth amendments, 237-243; suffrage under the Confederation, 257, 258; the Fourteenth and Fifteenth amendments in respect to suffrage are anachronisms, 262-268; the requisites of suffrage, 519-522; universal suffrage denied, 520; the abstract limits of, 522-524; the proper limits of, in the

- United States, 524-530; woman suffrage discussed at length, 530-542; suffrage should be made a national institution, 566-571.
- Sumner, Charles, on resumption, 92-94; on the election law, 562.
- Syndicate, origin and operations of, 176-179.
- Tariffs, history of tariff legislation in the United States, 447-462; act of 1789, 448; amendments of, 449, 450; United States had natural protection from 1787 to 1815, 450, 451; Lowndes's tariff of 1816, 451, 452; tariff of 1824, 453, 454; position of different States on, 453; tariff of 1828, 454; position of States on, 454, 455; South Carolina and nullification, 455; tariff of 1842, 456, 457; tariff of 1857, 457; Morrill tariff of 1861, 457, 463, 491, 492; distress and disaster have ever accompanied free trade in the United States, 449, 452, 453, 455-462; classes of articles to which a protective tariff should attach, 462-466; the case of coal, iron, lumber and wool, 464-466; agriculture in the United States needs no protection, 465-466; the extent to which a protective tariff should be laid, 466-468.
- Taxation, protection is not, 420; general law of, 469, 470; it is protection to life, liberty and property, 470; how it is such protection, 470-472; taxes classified, 472; taxes defined, 473; powers, for, 473, 474; difficulty in equalizing, 475-477; proportionate sacrifice and protection, 475-477; direct taxation considered, 477, 478; land-tax, 478-480, 484; the English land-tax, 479, 480; income taxes, 481-483; capitation-taxes, 483, 484; indirect taxes, 484, 485; house-taxes, 483-487; tax on bachelors, 486, 487; taxes on vocations, 487, 488; excise-taxes, 488; taxes on commodities, including necessities, comforts and luxuries, 488-493; the tax on whisky, 492, 493; commodity taxation by way of tariffs, 495-497; present sources of United States revenue, and its extent, 498, 499, 505; State taxation, rules for, 500-502; rules for United States taxation, 502-507; errors of tax bill of the last Congress, 504-507.
- Tennessee, how reconstructed, 200-205, 218.
- Texas, how reconstructed, 294, 295.
- Thirteenth amendment. (See CONSTITUTION.)
- Tribune*, New York, letter of Davis and Wade in, on Mr. Lincoln's reconstruction policy, 221.
- Troy, abuse of custom-house of, 371.
- Trumbull, Lyman, on "two-thirds of both Houses" of Congress, 197; on impeachment of Andrew Johnson, 313; as a statesman, 314; on civil service, 367; on the election law, 562.
- UNDERWOOD, JUDGE, on woman suffrage, 243.
- Usury laws, 47.
- VALUE of two kinds—value for use and value for exchange, 27, 28; the standard measure of, in the United States, 30, 31.
- Van Buren, Martin, minister to England, 342.
- Villages, question of, 430, 431, 436.
- Virginia, how reconstructed, 200, 201, 205, 218, 249, 295.
- WADE, B. F., *fiasco* of, on Mr. Lincoln's reconstruction policy, 221.
- War, European, 450, 451-458.
- Washington, treaty of, 146.
- Webster, Daniel, as Secretary of State, 274; on political economy, 400; on tariffs, 452-455; as a statesman, 517.
- Weitzell, General, on reconstruction, 200.
- Whiting, William, on reconstruction, 217, 218.
- Woman, her nature, 534, 535; instincts of, 534, 535, 537, 538.
- Woods, Justice, on the Constitution, 244.
- Wool, protective tariff not needed on, 464-466; clip of, in various years, 466.



[illegible]

PRINTED IN U.S.A.

UC SOUTHERN REGIONAL LIBRARY PROGRAM

A 001 046 507 8

